

SAME-SEX RELATIONS AND THE CATHOLIC CHURCH: HOW LAW AND DOCTRINE HAVE EVOLVED, 1820–2020

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ABSTRACT

This article surveys the evolution of the Catholic Church's official response to same-sex relations over the last two centuries. While the church has not altered its condemnation of same-sex relations, the justifications it offers for this negative judgment have shifted substantially, and they have moved, especially recently, in a direction that makes possible the acceptance of same-sex relations at some future—and perhaps not too-distant—date. This article explores the manualist tradition of the nineteenth and early to mid-twentieth centuries; twentieth-century developments in canon law; and the period of retrenchment and reaction under popes John Paul II and Benedict XVI. Its final section looks at developments under Pope Francis. It closes by considering the way the church's teaching shifted over the course of its history—penance and the forgiveness of sins; anti-Semitism; and the sin against natural-law of taking interest on a loan (usury). It proposes that we might witness the church undergo a similar shift on same-sex relations.

KEYWORDS: same-sex relations, canon law, Roman Rota, manualist tradition, Freudian psychiatry, John Paul II, doctrinal change, *Sensus Fidelium*, anti-Semitism

INTRODUCTION

That the Catholic Church has spoken emphatically and consistently against same-sex relations is taken for granted by most commentators, by most church figures, and by most observers. I do not mean to challenge that proposition in this article. But I do propose that the rationale for condemning same-sex relations has changed substantially over the last two centuries of church history and that it has evolved in a direction that at least makes possible the acceptance of same-sex relations at some future—and not too distant—date.

I explore this proposal over this article's four major sections. I begin with what is known as the church's manualist tradition, which flourished in the period between the early nineteenth century and World War II and which restated the body of rules and norms meant to regulate the sexual activity of Catholics. The manualist writers produced what amounted to teaching documents directed at seminarians and Catholic priests. Their authors tended to be well-placed ecclesiastics—some of them bishops, others leading professors of canon law or moral theology. These works were conservative and traditional where same-sex relations were concerned. Their authors were largely content with reiterating well-worn norms and offered little in the way of fresh insight.

In the next section I look closely at the judicial decisions of the Holy Roman Rota and the writings of academic canon lawyers. The Rota is essentially one of the Catholic Church's two supreme tribunals and has special jurisdiction over allegations concerning the invalidity of marriage. Over the course of the twentieth—and now the twenty-first—centuries, the Rota has been called upon frequently to scrutinize the validity of putatively heterosexual marriages in which one party was actually homosexual. The Rota—and canonistic scholarship more broadly—it will be shown, once engaged the scientific literature on the topic of homosexuality and at least took it seriously, but in recent decades has responded in highly conservative, even reactionary ways to larger movements in the world of science and sexuality.

In the third section, I look at recent developments on the question of same-sex relations over the last twenty to thirty years, but I especially focus on developments since the election of Pope Francis. I consider both the cautious openings the pope has made on the subject of same-sex relationships and the statements and actions of other leading members of the hierarchy that suggest at least the possibility of evolutionary change on this topic.

It should become clear from this review that the church's views on homosexuality have been far from static. Indeed, one can detect a substantial shift from a simple condemnation of particular acts, grounded in a narrow reading of scripture or natural law, and towards a greater willingness to view homosexuality as a more or less enduring and regularly occurring feature of the human condition. Not a condition that is approved of, or even considered as morally neutral, but a condition that is nevertheless acknowledged as describing a certain subset of the Catholic population.

In the article's final section, I point to other areas of ecclesial life that have witnessed rapid and fundamental change. These areas include the practice of penance, anti-Semitism, and the teaching on usury. I conclude by making it clear that doctrine in the Catholic Church does develop. Church teaching has changed—sometimes dramatically and fundamentally—to take account of altered realities. Tradition is not frozenness in time. It is not the blind repetition of the past. It is, to be sure, fidelity to timeless principles, but the principles in question are always dynamic and capable of growth and adaptation, as our consciousness of what it means to be human and to follow God's will expands from generation to generation.

THE ANTI-SODOMY NORMS: THE MANUALIST TRADITION

The Nineteenth Century

Background

The moral theology and canon law of the nineteenth and early twentieth centuries has been described as “manualist.”¹ The moral theologians and canon lawyers of the day avoided much in the way of originality. Rather, they saw their task as the production of handbooks—manuals—that sought to summarize and synthesize older materials.² These writers looked back fondly to Thomas Aquinas, Alphonsus de Liguori, and the canon lawyers of the medieval and early modern periods to reduce to usable format the wisdom of the past. Their works did not always distinguish

1 Charles E. Curran, *The Origins of Moral Theology in the United States: Three Different Approaches* (Washington, DC: Georgetown University Press, 1997), 54.

2 “[T]he manualist genre saw itself as prizing conservatism and continuity, not innovation.” Michael J. Lacey and Francis Oakley, *The Crisis of Authority in Catholic Modernity* (Oxford: Oxford University Press, 2011), 240.

clearly between moral theology and law.³ And they were inclined to omit the sophistication and sensitivity of their sources.⁴

The intent was not to create works of great originality, or to be responsive to individual needs and contingencies, or even to dispense pastoral guidance for times of personal crisis. These were not works meant to address the personal needs of conscience. Rather, their purpose was the production of rules of broad generality and applicability.⁵ These writers had their audience, which was the seminaries and the clergy of Catholic Europe.⁶ And this audience, at this particular moment in history, craved clear answers, authoritative solutions, and uniform results.⁷

Catholic Europe for much of the nineteenth century, after all, was caught up in the conservatism of the day. While deep currents of unrest were detectable throughout Europe in this great age of economic and social disruption, on the surface all seemed calm. Stability, deference to authority, acceptance of an established hierarchy were the visible characteristics of the age, even though social ferment brewed just beneath the surface.

The Catholic Church was very much a part of the monarchical pageant of the age. After all, 1870 witnessed the First Vatican Council pronounce the doctrine of papal infallibility, which conferred a special absolutism on the pope in the same year the papal states were finally lost to the armies of Giuseppe Garibaldi.⁸ In many corners of Europe, ultra-montanism, that heartfelt and uncritical yearning for an imagined medieval high papal grandeur, was in full flower.⁹ And throughout the Catholic parts of the Continent, popular piety and practice was running at riptide.¹⁰

Simultaneously, intellectual life, at least as manifested in the manualist tradition, had grown calcified. Aquinas and Liguori, after all, had produced intellectually vital works, subtle, supple, and sophisticated responses to the acutest problems of their day. The same could not be said for nineteenth-century writers who abstracted from and digested these earlier sources to produce a sterile, act-centered codification of seemingly unalterable moral rules.¹¹ It is nevertheless valuable to commence our inquiry with these writers so as to gain an appreciation of what the leading figures in the Catholic Church of this period thought of same-sex relations. Thus we might establish a baseline from which to chart how significantly that teaching has evolved in the succeeding 180 or 200 years.

The Nineteenth-Century Manualists

I begin with the Austrian Josef Ambrose Stapf (1785–1844), who counts among the earliest figures of the manualist tradition. Stapf was an Austrian seminary professor whose *Theologia Moralis* has

3 James William McClendon, *Ethics: Systematic Theology*, rev. ed. (Nashville: Abingdon Press, 2002), 74.

4 Daniel Franklin Pilario, *Back to the Rough Ground of Praxis: Exploring Theological Method with Pierre Bourdieu* (Leuven: Peeters, 2005), 263.

5 David Bohr, *Catholic Moral Tradition, Revised*, rev. ed. (1999; repr., Eugene: Wipf and Stock, 2006), 70.

6 John A. Gallagher, *Time Past, Time Future: An Historical Study of Catholic Moral Theology* (1990; repr., Eugene: Wipf and Stock, 2003), 37.

7 Michael J. Himes, "The Development of Ecclesiology: Modernity to the Twentieth Century," in *The Gift of the Church: A Textbook on Ecclesiology in Honor of Patrick C. Granfield, O.S.B.*, ed. Peter C. Phan (Collegeville: Liturgical Press, 2000), 45–67, at 61.

8 Eamon Duffy, *Saints and Sinners: A History of the Popes*, 2nd ed. (New Haven: Yale University Press, 2006), 293–300.

9 Peter Raedts, "The Church as Nation-State: A New Look at Ultra-Montane Catholicism (1850–1900)," *Nederlands archief voor kerkgeschiedenis* 84, no. 1 (2004): 476–96, at 483–86.

10 Mark R. Francis, "Liturgy and Popular Piety in a Historical Perspective," in *Directory on Popular Piety and Liturgy: Principles and Guidelines*, ed. Peter C. Phan (Collegeville: Liturgical Press, 2005), 19–43, at 40–41.

11 R. Kevin Seasholtz, *A Virtuous Church: Catholic Theology, Ethics, and Liturgy for the Twenty-First Century* (Maryknoll: Orbis Books, 2012), 104.

been described as having a “strictly orthodox presentation” and a “practical usefulness.”¹² By the 1830s, this work had become required reading “for all the seminaries in Austria.”¹³ Stapf was not entirely derivative in his work. Indeed, he revealed creativity and real sympathy in dealing with the rights of labor in the context of the Industrial Revolution.¹⁴

But on sexual matters, Stapf reiterated the ancient norms. Stapf treated sodomy—there was as yet no real scientific understanding of homosexuality as a persistent attraction or orientation—as the worst of all the sexual crimes.¹⁵ Incest was wicked, rape was a crime of violence, and sex in sacred shrines or precincts was worse still for its blasphemous qualities.¹⁶ All were mortal sins. But sodomy, which was the worst crime against nature, surpassed all of these other offenses in its shamefulness (“*ima maxima pudenda vitia*”).¹⁷

Stapf followed a long line of predecessors in distinguishing between perfect and imperfect sodomy (perfect sodomy involved sexual relations between members of the same gender, while imperfect sodomy usually involved nonvaginal intercourse between a man and a woman).¹⁸ Stapf also said little new in describing sodomy as a deliberate defiance of nature.¹⁹ He noted that Paul in his Letter to the Romans, Cicero in his Tusculan Disputations, and Aristotle in his ethical works, all denounced sodomy.²⁰ And God in his sulfuric destruction of the biblical Sodom revealed the sort of punishment reserved for offenders.²¹

Thomas Gousset (1792–1866) achieved the pinnacle of success in two careers—first as a professor of theology and then as the archbishop and cardinal of the ancient see of Reims. His biographer described him as “a moralist of sure judgment and remarkable tact.”²²

Gousset borrowed from and synthesized the main ideas of his moral writings from Alphonsus Liguori and the papal magisterium.²³ Like Stapf, Gousset added little that was new on the subject of sodomy. He treated sodomy as an offense against the Ten Commandments.²⁴ The essence of the offense, as he understood it, was male-on-male or female-on-female sexual activity.²⁵ It did not

12 Friedrich Lauchert, “Joseph Ambrose Stapf,” *Catholic Encyclopedia*, vol. 14 (1913), Wikisource, April 2013, [https://en.wikisource.org/w/index.php?title=Catholic_Encyclopedia_\(1913\)/Joseph_Ambrose_Stapf&oldid=4397882](https://en.wikisource.org/w/index.php?title=Catholic_Encyclopedia_(1913)/Joseph_Ambrose_Stapf&oldid=4397882).

13 Lauchert, “Joseph Ambrose Stapf.”

14 James Healy, *The Just Wage, 1750–1890: A Study of the Moralists from Saint Alphonsus to Leo XIII* (Berlin: Springer, 1966), 292–99.

15 Joseph Ambrose Stapf, *Theologia Moralis in Compendium Redacta* [Compendium of moral theology], 5th ed., vol. 2 (Innsbruck: Wagner, 1841), 306–07.

16 Stapf, *Theologica Moralis*, 304–05.

17 Stapf, 306 (the other crimes against nature included masturbation and bestiality). All translations from the Latin in the text and notes are mine.

18 Stapf, 306. Cf. Richard Fantina, *Straight Writ Queer: Non-Normative Expressions of Heterosexuality in Literature* (Jefferson: McFarland, 2006), 17 (providing the history of this distinction).

19 Stapf, *Theologia Moralis*, 307 (“*quae ad animum ab hac nefanda ipsius naturae contumelia*”).

20 Stapf, 306.

21 Stapf, 306.

22 J. Gousset, *Le Cardinal Gousset: sa vie, ses ouvrages, son influence* [Cardinal Gousset: His life, his work, his influence] (Besançon: Henri Bossane, 1903), 512 (“un moraliste d’un jugement et d’un tact remarquable”).

23 Jean Guerber, *La ralliement du clergé français à la morale liguorienne: L’abbé Gousset et ses précurseurs (1785–1832)* [The rally of French clergy to Liguorian morality: Abbot Gousset and his precursors] (Rome: Università Pontificia Gregoriana Editrice, 1973), 213–27.

24 Thomas Marie Joseph Gousset, *Théologie morale à l’usage des curés et des confesseurs* [Moral theology for use by priests and confessors], 5th ed., vol. 1 (Paris: Jacques Lecoffre, 1848), 300–01.

25 Gousset, *Théologie morale*, 300.

matter who was the active or who was the passive partner. It all violated the natural law, and hence the gravity of the offense remained the same regardless of the degree of participation.²⁶

Francis Kenrick was likely the greatest of the American manualists. He was archbishop first of Philadelphia and then of Baltimore, and his moral writings enjoyed an international reputation.²⁷ His audience was American seminary students, but he wrote for them in the Latin tongue and published on a Belgian imprint. In some respects, he was a reactionary. He thus continued to defend the morality of slavery even as America entered the Civil War.²⁸ Where marriage was concerned, however, he revealed himself creative and sympathetic. He was among the first to stress the significance of passionate, erotic “love as one of the rational purposes of marital intercourse.”²⁹

With sodomy, on the other hand, Kenrick reverted to his reactionary side. Sodomy, he wrote, was the most immense and outrageous of all the sins (“immanissimum . . . peccatum”) and was frequently punished by God with avenging fire.³⁰ Sodomites, Kenrick flamboyantly wrote, were for that reason subject to execution by burning at civil law (“iure civili puniebantur flammis”).³¹

While other early manualists failed to match Kenrick’s rather heated recommendation, one sees in their work obsessive attempts to outdo one another in their condemnations of sodomy. A text by Giovanni Devoti, the bishop of Anagni, declared that sodomy and bestiality were not so much crimes as monstrosities and “freaks of nature” (“prodigia”).³² Those guilty of such offenses should not only be banished from the church’s “doorway” but denied entirely its protective shelter.³³

A treatise by Antonio Ballerini and Domenico Palmieri treated sodomy under the larger category of *luxuria*—a noun that in context might be translated as *decadence*.³⁴ Sodomy was an “unspeakable crime,” they wrote, because it recalled the divine punishment of Sodom and Gomorrah.³⁵ It offended against nature because it was a misuse of the generative processes.³⁶ A compendium of

26 Gousset, *Théologie morale*, 301.

27 John Canon O’Hanlon, “The Two Kenricks,” *American Catholic Quarterly Review* 17, no. 66 (1892): 382–406, at 391–92.

28 Max Longley, *For the Union and the Catholic Church: Four Converts in the Civil War* (Jefferson: McFarland, 2015), 11.

29 Charles E. Curran, *Catholic Moral Theology in the United States: A History* (Washington, DC: Georgetown University Press, 2008), 14; Shaji George Kochuthara, *The Concept of Sexual Pleasure in the Catholic Moral Tradition* (Rome: Editrice Pontificia Università Gregoriana, 2007), 243.

30 Francis Kenrick, *Theologia Moralis* [Moral theology], vol. 1 (Mechelen: H. Dessain, 1861), 84.

31 Kenrick, *Theologia Moralis*, 84. The secular criminal codes of the latter Middle Ages and early modern period, which Kenrick seems to have in mind, sometimes subjected gay persons to death by burning at the stake. D. A. Coward, “Attitudes to Homosexuality in Eighteenth-Century France,” *Journal of European Studies* 10, no. 40 (1980): 231–55, at 231–33. Sodomy and heresy were often equated in the criminal courts. The German criminal code, the *Constitutio Criminalis Carolina*, similarly imposed burning for both offenses, but the punishment for sodomy was often commuted to decapitation. Helmut Puff, *Sodomy in Reformation Germany and Switzerland: 1400–1600* (Chicago: University of Chicago Press, 2003), 29; see also William E. Burgwinkle, *Sodomy, Masculinity, and Law in Medieval Literature: France and England, 1050–1230* (Cambridge: Cambridge University Press, 2004), 201 (for further details).

32 Giovanni Devoti, *Institutiones Canonicae* [Canonical institutions], 4th ed., vol. 4 (Venice: Sebastianus Valle, 1827), 145.

33 Devoti, *Institutiones Canonicae*, 145.

34 Antonio Ballerini and Domenico Palmieri, *Opus Theologicum Morale* [Comprehensive moral theology], vol. 2 (Prato: Giachetti, 1890), 721–27.

35 Ballerini and Palmieri, *Opus Theologicum Morale*, 726.

36 Ballerini and Palmieri, 722.

moral teachings edited by Gabriele de Varceno denounced sodomy as a “lustful act” and the “very worst of crimes” (“crimen pessimum”).³⁷

The Twentieth Century

Background

As the nineteenth century ended and the twentieth began, the church was experiencing fundamental, even revolutionary change. The loss of the papal states in 1870 shook the church’s self-identity.³⁸ The church had thought, with reason, ever since at least the Carolingian period, that ecclesiastical independence required temporal sovereignty. No longer, however, did the church govern a significant temporal territory, no longer could it call upon its subjects for self-defense, no longer could it hope to participate, as it had just a few years before, as a player in European politics.³⁹ A great fear swept ecclesiastical circles that the church now stood exposed to its enemies.⁴⁰

Pope Leo XIII (reigned 1878–1903) responded brilliantly to this crisis by redefining the very character of the papacy.⁴¹ Although he still plainly longed for the world that was lost,⁴² Leo would remake the papacy into what it has become today—at its best, a voice of morality and conscience to the world.⁴³ This reconceptualization of the papacy was especially noticeable on the subject of what came to be known as the “social question.” In his encyclical *Rerum Novarum* (1891), Leo gave content to the ideal of social justice and applied it concretely to the labor crisis of the Industrial Revolution.⁴⁴ Criticizing both unfettered capitalism and Marxist-inspired socialist revolution, Leo proposed charting a middle course economically, advocating for living wages and the right of all workers to organize.⁴⁵

A quarter century later, thanks to the joint efforts of popes Pius X and Benedict XV, and the canonist-cardinal Pietro Gasparri, a code of canon law was promulgated for the church (1917).⁴⁶

37 Gabriele de Varceno, ed., *Compendium Theologiae Moralis* [Compendium of moral theology], vol. 1 (Turin: Marietti, 1872), 263–64.

38 Joseph S. Flipper, *Between Apocalypse and Eschaton: History and Eternity in Henri de Lubac* (Minneapolis: Fortress, 2015), 41.

39 S. J. Barnett, *The Enlightenment and Religion: The Myths of Modernity* (Oxford: Oxford University Press, 2003), 183.

40 Thomas J. Reese, *Inside the Vatican: The Politics and Organization of the Catholic Church* (Cambridge, MA: Harvard University Press, 1996), 17–18.

41 Thomas Massaro, “The Social Question in the Papacy of Leo XIII,” in *The Papacy Since 1500: From Italian Prince to Universal Pastor*, ed. James Corkery and Thomas Worcester (Cambridge: Cambridge University Press, 2010), 143–61, at 147.

42 Frank J. Coppa, *The Modern Papacy Since 1789* (1998; repr., New York: Routledge, 2013), 136.

43 Daniel A. Binchy, “The Papacy in a Changing World,” *Studies: An Irish Quarterly Review* 26, no. 104 (1937): 641–47, at 643–45.

44 John P. Bequette, *Christian Humanism: Creation, Redemption, and Reintegration* (Lanham: University Press of America, 2007), 92–93; Charles J. Reid, Jr., “Catholics Must Honor Labor,” (blog), *Huffington Post*, September 5, 2016 (updated September 5, 2017) https://www.huffpost.com/entry/catholics-must-honor-labo_b_11863226.

45 Karim Schelkens, John A. Dick, and Jürgen Mettepenningen, *Aggiornamento? Catholicism from Gregory XVI to Benedict XVI* (Leiden: Brill, 2013), 65–67.

46 John J. Coughlin, *Canon Law: A Comparative Study with Anglo-American Legal Theory* (Oxford: Oxford University Press, 2011), 35–36.

The code, modeled on the European codification reforms of the nineteenth century, distilled centuries of juristic reasoning into a compact body of statutes and principles.⁴⁷

These were decisive events in the life of the church and represented sharp departures from settled ways of doing business. In spite of these dramatic occurrences, however, the manualist tradition remained largely undisturbed. Even while efforts were made to accommodate the new code of canon law,⁴⁸ the underlying substance of the manualist commentary still employed the same vocabulary and principles when speaking of homosexual acts.

The Twentieth-Century Manualists

Thus the fifteenth edition of the Gury/Sabetti *Compendium Theologiae Moralis*, published in 1916, described sodomy, both perfect and imperfect, as a “horrendous crime” and as acts that arouse “horror among all persons.”⁴⁹ Arthur Vermeersch condemned sodomy as a violation of nature so grave that its commission was roughly the same as bestiality.⁵⁰ The Welsh Jesuit Thomas Slater declared that sodomy was the “gravest sin against nature.”⁵¹

Augustine Lehmkuhl sought to isolate the particular feature that made sodomy so reprehensible and he located it in “an unnatural affection for one’s own sex” or the use of “an unnatural receptacle” for the purpose of sexual intercourse.⁵² In a note, Lehmkuhl revealed himself as among the first Catholic writers to recognize that for some individuals at least this “perverse inclination” towards one’s own sex seemed to be “inborn” (*insitam*) rather than freely chosen and willed.⁵³

Giovanni Ferreres’s *Compendium Theologiae Moralis ad Normam Codicis Canonici* (1925) might have taken as its starting point the new code of canon law, but its analysis of sodomy was largely unaltered from the generations of texts that had preceded it. Sodomy, for Ferreres, was a very grave crime.⁵⁴ Ferreres also added further distinctions to the types of sodomy he believed existed. In addition to the standard distinction between perfect and imperfect, he recognized a third category, *paederastia*, in which an adult male seduces a boy.⁵⁵

In a taxonomy of sins, Dominic Prümmer classified sodomy as among those offenses that cry out to heaven—the others being murder, the maltreatment of widows and orphans, and the diversion of

47 René Metz, “Pouvoir, centralisation, et droit: La codification du droit de l’Église catholique au début du XXe siècle” [Power, centralization, and law: the codification of Catholic Church law in the early twentieth century] *Archives de sciences sociales des religions* 51, no. 1 (1981): 49–64, at 49, 51–52, 58–59.

48 James F. Keenan, *A History of Catholic Moral Theology in the Twentieth Century: From Confessing Sins to Liberating Consciences* (London: Continuum, 2010), 18.

49 J. P. Gury, *Compendium Theologiae Moralis*, edited for seminaries by Aloysius Sabetti, 15th ed. prepared by A. Timothy Barrett (Cincinnati: Frederick Pustet, 1916), 278.

50 Arthur Vermeersch, *De Castitate et de Vitiis Contrariis: Tractatus Doctrinalis et Moralis* [On chastity and the sins against it: A doctrinal and moral treatise] (Rome: Università Pontificia Gregoriana, 1921), 335 (sodomy as violation of nature), 338 (comparison to bestiality). Vermeersch thought that bestiality might be slightly worse than sodomy but that it was a distinction almost without a difference. Vermeersch, *De Castitate et de Vitiis Contrariis*, 338.

51 Thomas Slater, *A Manual of Moral Theology*, 6th ed. (London: Burns, Oates, and Washbourn, 1928), 217.

52 Augustine Lehmkuhl, *Theologia Moralis*, vol. 1, 10th ed. (Freiburg: Herder, 1902), 525.

53 Lehmkuhl, *Theologia Moralis*, 525.

54 Giovanni Ferreres, *Compendium Theologiae Moralis ad Normam Codicis Canonici* [Compendium of moral theology with respect to the code of canon law], vol. 1 (Barcelona: Eugenius Subirana, 1925), 383.

55 Ferreres, *Compendium Theologiae Moralis*, 383.

charity meant for the poor.⁵⁶ Blunter than other writers, Prümmer graphically described sodomy as the insertion of one's penis into the *posterum* of another person.⁵⁷ It was, he said, among the foulest of all acts (*alii actus foedissimi*), and performed out of a lustful love for the other person.⁵⁸ In his treatise on canon law, Prümmer further declared that anyone guilty of sodomy was to be barred from all ecclesiastical functions until he or she made appropriate reparations.⁵⁹

Ludovicus Wouters addressed more particularly the problem of sodomy in a marital context. Such an act, done especially with a third party, provided the innocent spouse with grounds for perpetual separation, but not the right to remarry.⁶⁰ In a chapter on mental illness, Wouters defined homosexuality ("homosexualitas") as a sexual preference ("inclinatio sexualis") for one's own gender.⁶¹ He added that among women, this preference was called "lesbian love" ("amor lesbiacus"), and he echoed Ferreres in declaring that sexual relations between older men and boys was its own category of offense called pederasty ("paederastia").⁶²

The manualist tradition might be said to close with the English Jesuit Henry Davis, described variously as "one of the foremost moral manualists of recent times"⁶³ and as "one of the best practitioners of the old art of the Catholic moral manual."⁶⁴ Davis's treatment of sodomy, however, written in 1943, represented nothing new or fresh. It reads rather as an expert summation of the nineteenth- and early twentieth-century acts-based analysis of sodomy. It was the gravest of sins, and a crime under canon law.⁶⁵ It was in every case, no exceptions, the greatest offense against nature ("maxime contra naturam").⁶⁶ Its essence consisted in the affection one shows for one's own sex ("essentia sodomiae consistit in affectu ad eundem sexum").⁶⁷ It was condemned by God himself at Sodom and by Saint Paul in his Letter to Romans, when Paul denounced men and women who "exchanged natural relations for unnatural."⁶⁸

The work of the manualists spanned a little more than a century. There was detectible intellectual growth over that period, but it was modest. Some writers—Lehmkuhl, Wouters—acknowledged that same-sex attraction at least for some persons was a matter of more or less fixed *inclinatio*. A few writers distinguished between same-sex relations among adults and relations between men and boys, which was condemned under the separate label of pederasty. None of these insights, however, was ever particularly well developed.

56 Dominic Prümmer, *Manuale Theologiae Moralis secundum Principia S. Thomae Aquinatis* [Manual of moral theology according to principles of St. Thomas Aquinas], 3 vols. (Freiburg: Herder and Company, 1931), 1:244.

57 Prümmer, *Manuale Theologiae Moralis*, 2:543.

58 Prümmer, 2:543.

59 Dominic Prümmer, *Manuale Juris Ecclesiastici* [Manual of ecclesiastical law] (Freiburg: Herder and Company, 1920), 650.

60 Ludovicus Wouters, *Manuale Theologiae Moralis* [Manual of moral theology], 2 vols. (Bruges: Beyaert, 1932), 2:697.

61 Wouters, *Manuale Theologiae Moralis*, 1:33.

62 Wouters, 1:33.

63 Paulinus Ikechukwo Odozor, "Christology and Moral Theology," in "Christology," ed. Christopher McMahon and David Matzko McCarthy, special issue, *Journal of Moral Theology* 2, no. 1 (2013): 24, 28.

64 Leslie C. Griffin, "Catholic Moral Theology at the Supreme Court," *America*, July 2, 2014, <https://www.americamagazine.org/content/all-things/catholic-moral-theology-supreme-court>.

65 Henry Davis, *Moral and Pastoral Theology*, 4th ed., 4 vols. (New York: Sheed and Ward, 1943), 2:246 (In Latin.)

66 Davis, *Moral and Pastoral Theology*, 2:246.

67 Davis, 2:246.

68 Davis, 2:246. See also Romans, 1:26–27.

SAME-SEX ATTRACTION AND THE HOLY ROMAN ROTA

Background

The Roman Rota is one of two supreme appellate tribunals located at the Vatican and it is especially charged with reviewing petitions for the nullity of marriage. If the manualist tradition was mostly sterile and static, the Roman Rota took a decidedly different, more activist approach.

From time to time, petitioners brought—and still bring—cases before the Rota alleging as a basis for nullity their partner’s same-sex attraction. The Rota is thus forced to determine whether the partner’s alleged homosexuality invalidated a marriage. And in answering that question, the Rota is required to answer a host of ancillary questions. What is the nature of homosexuality? Was it amenable to correction? If it is, perhaps the parties should remain together. On the other hand, if it is an inherent and inalterable part of the human personality, then what? Shall the parties be separated and the marriage annulled? As the Rota developed its jurisprudence on these issues, it moved away from the acts-centered focus of the manualists and had steady recourse to scholarship in psychiatry and psychology.

Looking back on these decisions, one cannot describe them as enlightened. They often borrowed the worst stereotypes and trafficked in the worst lessons of the scientific literature of the day. Still, the adoption of a “scientific” explanation for same-sex attraction, no matter how crude or ill formed, represented a shift in premises. While the Rota to this day has refused to reconsider its negative judgments concerning the nature of homosexuality, its use of psychological findings at least opened the door to dialogue—and to criticism—on the basis of a widely shared set of foundational ideas.

The Legal Fictions of Objective Right Reason and Universal, Normative Heterosexuality

Before turning to an analysis of the rotal judgments themselves, it is useful to begin by examining the two largely unspoken assumptions that were shared by both the manualist texts and the canon lawyers. For the most part, both theologians and lawyers took it for granted that all human beings possessed sexual impulses that were essentially heterosexual in kind and quality and subject to an objectively knowable right reason.⁶⁹ The Catholic moral writer Michael Buckley unironically put these assumptions into words: “[e]xcept for the fact that homosexuals exist . . . there is nothing whatever to suggest that the natural and divinely ordained human condition is other than *uniquely heterosexual*” (emphasis in original).⁷⁰

Both the moralists and the lawyers surely believed unconditionally in these twin assumptions. A long and deep textual tradition traceable to medieval roots offered them ample confirmation in their views.⁷¹ These commentators thus could have found all the support they needed to sustain their prejudices in the work of Peter Damian who in the mid-eleventh century proposed in his polemical work *Liber Gomorrhianus* a whole catalogue of the types of same-sex relations parties might have had.⁷²

69 Thomas Petri, *Aquinas and the Theology of the Body* (Washington, DC: Catholic University of America Press, 2016), 41–42.

70 Michael J. Buckley, *Morality and the Homosexual: A Catholic Approach to a Moral Problem* (Westminster: Newman Press, 1960), 150. In the same paragraph, Buckley considered the claim “that the homosexual is such by the will of God and is [not] to be blamed for the direction of his sexual drive.” This proposition, Buckley found contrary to “revealed truth” and “reason.” Buckley, 150.

71 Louis Crompton, *Homosexuality and Civilization* (Cambridge, MA: Harvard University Press, 2003), 205.

72 Mark D. Jordan, *The Invention of Sodomy in Christian Theology* (Chicago: University of Chicago Press, 1997), 45–51.

Moralists and lawyers similarly could—and did—fall back on an entrenched medieval vocabulary that featured words such as *mollities* (softness) or *molles* (soft) or variants of the adjective *effeminatus* (effeminate) to describe—and condemn—those who might have had persistent same-sex attraction.⁷³ Their attitudes might have been further hardened had they consulted medieval medical texts, like Pseudo-Aristotle’s *Problemata*. This text was a composite that reached its final form sometime in the late antique Roman Empire,⁷⁴ but was regarded by many medieval writers as an authentic part of the Aristotelian corpus.⁷⁵ It speculated wildly on such topics as why some men preferred anal sex, suggesting both anatomical and (depraved) moral reasons for doing so.⁷⁶ And there were certainly medieval medical writers who took the *Problemata* seriously and authoritatively.⁷⁷

In other words, moral writers and lawyers alike could have found support for their condemnations of same-sex relations embedded deeply not only in the church’s tradition but in the everyday language they used to describe homosexuality.

They were reinforced in their prejudices by their views of human sexuality. Sex, as the manualists and canonists understood their tradition, was an important human urge, and a particularly unruly one.⁷⁸ Social institutions were established for the purpose of regulating and even subduing altogether the sexual passions.⁷⁹ Virginity, chastity, marriage, and celibacy were all ways of life given legal definition and social support the better to control and subdue these passions.⁸⁰

But where one failed and committed a sexual transgression, then one was plunged into a hierarchically arranged set of wrongdoings. Fornication was wrong and sinful, but it was not as bad as adultery.⁸¹ Masturbation and the use of contraceptives were worse still because they were opposed to the natural consequences of the sex act—that is, the (at least theoretical) possibility

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- 73 David Clark, *Between Medieval Men: Male Friendships and Desire in Early Medieval English Literature* (Oxford: Oxford University Press, 2009), 62; Bruce W. Holsinger, *Music, Body, and Desire In Medieval Culture: Hildegard of Bingen to Chaucer* (Stanford: Stanford University Press, 2001), 157; Richard Sharpe, “Appendix: The Prefaces of *Quadrupartitus*,” in *Law and Government in Medieval England and Normandy: Essays in Honour of Sir James Holt*, ed. George Garnett and John Hudson (Cambridge: Cambridge University Press, 1994), 148–72, at 153n25.
- 74 István Bodnár, “The *Problemata Physica*: An Introduction,” in *The Aristotelian Problemata Physica: Philosophical and Scientific Investigations*, ed. Robert Mayhew (Leiden: Brill, 2014), 1–10.
- 75 Maarten J. F. M. Hoenen and Pieter de Leemans, “Pietro d’Abano between Text and Tradition: Introduction,” in *Between Text and Tradition: The Reception of Pseudo-Aristotle’s Problemata Physica in the Middle Ages*, ed. Pieter de Leemans and Maarten J. F. M. Hoenen (Leuven: Leuven University Press, 2016), xi–xivi, at xiv.
- 76 Kenneth Borris, ed., *Same-Sex Desire in the English Renaissance: A Sourcebook of Texts, 1470–1650* (New York: Routledge, 2004), 116–18.
- 77 Joan Cadden, “Sex and Sensibilities in the Medieval *Problemata* Tradition: Pietro d’Abano and His Readers,” in Leemans and Hoenen, *Between Text and Tradition*, 53–80, at 69–75; Faith Wallis, “Giulio Guastavini’s Commentary on Pseudo-Aristotle’s Account of Male Same-Sex Coitus,” in *The Sciences of Homosexuality in Early Modern Europe*, ed. Kenneth Borris and George Rousseau (New York: Routledge, 2008), 57–73; David F. Greenberg, *The Construction of Homosexuality* (Chicago: University of Chicago Press, 1988), 278.
- 78 Peter Gardella, *Innocent Ecstasy: How Christianity Gave America an Ethic of Sexual Pleasure* (Oxford: Oxford University Press, 1985), 37–38.
- 79 Margaret A. Farley, “Sexual Ethics,” in *Sexuality and the Sacred: Sources of Theological Reflection*, ed. James B. Nelson and Sandra P. Longfellow (Louisville: Westminster/John Knox Press, 1994), 54–70, at 64–65.
- 80 Ronald Lawler, Joseph Boyle, Jr., and William E. May, *Catholic Sexual Ethics: A Summary, Explanation, and Defense*, 2nd ed. (Huntington: Our Sunday Visitor Press, 1998), 122–39.
- 81 Roderick Phillips, *Untying the Knot: A Short History of Divorce* (Cambridge: Cambridge University Press, 1991), 103; Karen Jones, *Gender and Petty Crimes in Late Medieval England: The Local Courts in Kent, 1460–1560* (Woodbridge: Boydell Press, 2006), 136–37.

of conception.⁸² And sodomy and bestiality were the very worst because they not only rejected the procreative dimension of sexual relations but defied the natural order and purpose of creation.⁸³

One can see in this hierarchy of wrongs the working out of the commitment to the two legal fictions of right reason and normative heterosexuality. Sodomites could be condemned as uniquely wicked because their reason was presumed to be the same as everyone else's. Their sexual inclinations could be condemned as inherently irrational and their defiance of natural law deemed that much worse for transgressing the heterosexual norm that they were assumed to know and were capable of following but for their stubbornness of will.⁸⁴

This pair of assumptions came to be challenged by discoveries in the larger secular world at the end of the nineteenth and in the twentieth centuries. That challenge arose primarily in the areas of psychology and medical science. The magisterium was eventually forced to respond, and it did so by shifting its analysis away from a focus on individual acts, which were assessed in isolation and seen as little more than expressions of willful uncontrolled passion or lust, and towards a perspective that at least acknowledged developments in the fields of science, psychology, and medicine.

The story of the Catholic Church and same-sex attraction in the twentieth century can be told at least in part in terms of the church's reaction to these larger intellectual currents. But before examining the church's use of this body of learning, I begin with a brief sketch of what was happening in science, psychology, and medicine.

The Idea of Same-Sex Attraction in the Scientific Literature, 1900–2000

Homosexualität, the German equivalent for the noun *homosexuality*, seems to have been coined around 1869 by the Hungarian-German journalist and activist Karl Maria Kertbeny.⁸⁵ Kertbeny was himself homosexual, and he sought a neutral vocabulary to describe what he believed to be a fixed and natural sexual identity on the part of many men.⁸⁶ The German noun, transliterated into other European languages, quickly “took on a life of its own” and by the end of the nineteenth century its usage had become familiar “to the general public.”⁸⁷

The English writer Havelock Ellis further developed these insights in his book *Sexual Inversion* (1897). Of Ellis, it has been said that he “stands in the same relation to modern sexual theory as Max Weber to modern sociology.”⁸⁸ Ellis was married to a woman who was a known

82 John Portmann, *A History of Sin: Its Evolution to Today and Beyond* (Lanham: Rowman and Littlefield, 2007), 83–98; Leslie Woodcock Tentler, *Catholics and Contraception: An American History* (Ithaca: Cornell University Press, 2004), 92–93.

83 Franco Mormando, *The Preacher's Demons: Bernardino of Siena and the Social Underworld of Early Renaissance Italy* (Chicago: University of Chicago Press, 1999), 121–30.

84 Carolyn Dinshaw, *Getting Medieval: Sexualities and Communities, Pre- and Postmodern* (Durham: Duke University Press, 1999), 6–7.

85 Whitney Davis, *Queer Beauty: Sexuality and Aesthetics from Winckelmann to Freud and Beyond* (New York: Columbia University Press, 2010), 244.

86 Robert Deam Tobin, *Peripheral Desires: The German Discovery of Sex* (Philadelphia: University of Pennsylvania Press, 2015), 16; Graham Robb, *Strangers: Homosexual Love in the Nineteenth Century* (New York: W. W. Norton, 2003), 67–68.

87 Robert Deam Tobin, “Kertbeny, ‘Homosexuality,’ and the Language of Nationalism,” in *Genealogies of Identity: Interdisciplinary Readings on Sex and Sexuality*, ed. Margaret Sönsner Breen and Fiona Peters (Amsterdam: Rodolpi, 2005), 3–18, at 5.

88 Paul A. Robinson, “Havelock Ellis and Modern Sexual Theory,” *Salmagundi*, no. 21 (1973): 27–62, at 49.

lesbian⁸⁹ and himself had unconventional sexual desires.⁹⁰ He “presented homosexuality as a biological anomaly, akin to colour blindness.”⁹¹ He was analytical, precise, concerned with scientific observation and description, and “non-judgmental” in the conclusions that he reached.⁹²

Sigmund Freud, for his part, sought to fit homosexuality within his larger account of the origins of the human sex drive. For Freud, it all began with libido. He borrowed this noun from classical philosophy—Freudian analysis has deep roots in its founder’s immersion in classical learning⁹³—and charged it with sexual significance.⁹⁴

The objects of one’s libido, for Freud, began to take shape during infancy. Just after birth, Freud thought, very young infants had “no particular sexual orientation be it homosexual or heterosexual.”⁹⁵ The “sex drive” was “undifferentiated,” and sexual preference was “developmental.”⁹⁶ For the male, sexual orientation was conferred by the resolution of the oedipal conflict—the instinctive sexual attraction every young male felt towards his mother.⁹⁷ Homosexuality, for Freud, was caused ultimately “by a traumatic oedipal period” which might lead to “castration anxiety”⁹⁸ or to “the identification of the child with the mother.”⁹⁹

Freud made clear late in life that he did not consider homosexuality to be a “sickness.”¹⁰⁰ Freud’s views, in fact, were “relatively tolerant.”¹⁰¹ Homosexuality posed risks of neurosis, but all forms of sexual choice and repression presented similar dangers.¹⁰² Freud’s work, however,

89 Alison Oram, “A Sudden Orgy of Decadence: Writing about Sex between Women in the Interwar Popular Press,” in *Sapphic Modernities: Sexuality, Women, and National Culture*, ed. Laura Doan and Jane Garrity (New York: Palgrave Macmillan, 2006), 165–82, at 183, 186.

90 Andrew Brink, “Havelock Ellis: Eros and Explanation,” *Russell: The Journal of Bertrand Russell Studies*, no. 37–40 (1980): 59–64; Allida M. Black, “Perverting the Diagnosis: The Lesbian and the Scientific Basis of Stigma,” *Historical Reflections* 20, no. 2 (1994): 201–16, at 208.

91 Victoria Clarke, Sonja J. Ellis, Elizabeth Peel, and Damien W. Riggs, *Lesbian, Gay, Bisexual, Trans, and Queer Psychology: An Introduction* (Cambridge: Cambridge University Press, 2010), 8.

92 Richard Ekins and Dave King, *The Transgender Phenomenon* (London: Sage, 2006), 62.

93 Fabio Stok, “Psychology,” in *A Companion to the Classical Tradition*, ed. Craig W. Kallendorf (Malden: Blackwell, 2007), 355–70, at 355, 367. See generally, Richard H. Armstrong, *A Compulsion for Antiquity: Freud and the Ancient World* (Ithaca: Cornell University Press, 2005).

94 Sigmund Freud, *Three Essays on the Theory of Sexuality*, James Strachey, ed. and trans. (New York: Basic Books, 2000), 83–85.

95 Luis A. Cordon, *Freud’s World: An Encyclopedia of His Life and Times* (Santa Barbara: ABC-CLIO, 2012), 192.

96 Nicholas C. Edsall, *Toward Stonewall: Homosexuality and Society in the Modern Western World* (Charlottesville: University of Virginia Press, 2003), 242.

97 Edsall, *Toward Stonewall*, 194–96.

98 Charles Socarides, “Homosexuality, Psychoanalytic Theory Of,” in *The Freud Encyclopedia: Theory, Therapy, and Culture*, ed. Edward Erwin (London: Routledge, 2002), 258–60, at 260.

99 Timothy F. Murphy, “Freud Reconsidered: Bisexuality, Homosexuality, and Moral Judgment,” in *Bisexual and Homosexual Identities: Critical Theoretical Issues*, ed. John P. DeCecco and Michael G. Shively (New York: Haworth Press, 1984), 65–78, at 65, 71.

100 Paul Robinson, “Freud and Homosexuality,” in *Whose Freud: The Place of Psychoanalysis in Contemporary Culture*, ed. Peter Brooks and Alex Woloch (New Haven: Yale University Press, 2000), 144–49, at 145.

101 Alan C. Elms, *Uncovering Lives: The Uneasy Alliance of Biography and Psychology* (Oxford: University of Oxford Press, 1994), 43.

102 Tim Dean, “Homosexuality and the Problem of Otherness,” in *Homosexuality and Psychoanalysis*, ed. Tim Dean and Christopher Lane (Chicago: University of Chicago Press, 2001), 120–45, at 122–26; Jonathan Dollimore, *Sexual Dissidence: Augustine to Wilde, Freud to Foucault* (Oxford: University of Oxford Press, 1991), 177.

would provide the basis for subsequent efforts to turn homosexuality into a disease that was at once dreaded and thought to be “curable.”¹⁰³

Indeed, within a year of Freud’s death, the psychoanalytic writer Sandor Rado proposed that “homosexuality is inherently pathological.”¹⁰⁴ It resulted, Rado believed, from “unconscious fears of women and heterosexuality.”¹⁰⁵ Rado’s followers expanded and elaborated upon the idea that most forms of homosexuality were caused by “unrealistic fears” generated by intense early childhood experiences.¹⁰⁶ And if homosexuality was the product of deeply rooted fears, then it should on this theory, be amenable to psychiatric treatment aimed at eradicating the irrational fear.¹⁰⁷

This understanding of homosexuality as pathology led logically if tragically to the ostracism and marginalization of homosexuals under the proclaimed mandate of science. In 1945, Otto Fenichel described homosexuality as a “perversion.”¹⁰⁸ Homosexuality came to be denounced as deviancy that sapped the social order,¹⁰⁹ undermined national stability and security,¹¹⁰ and promised political subversion.¹¹¹ In 1956, Edmund Bergler published his extremely influential *Homosexuality: Disease or Way of Life?*¹¹² The book passed through numerous editions.¹¹³ In it, Bergler “portrayed the homosexual as a *totally* sick personality” (emphasis in original).¹¹⁴

In the United States, succeeding editions of the *Diagnostic and Statistical Manual* (or *DSM*), the principal diagnostic manual of the American Psychiatric Association, referred to homosexuality as a disorder, as did the World Health Organization.¹¹⁵ It was widely believed that even if the prospects were not especially bright, it was the duty of therapists to seek to cure sufferers of their homosexual inclinations for their own good and for the benefits of larger society.¹¹⁶ These treatments

103 Robert M. Friedman, “The Psychoanalytic Model of Male Homosexuality: A Historical and Theoretical Critique,” in “Toward a New Psychology of Men: Psychoanalytic and Social Perspectives,” ed. Robert M. Friedman and Leila Lerner, special issue, *Psychoanalytic Review* 73, no. 4 (1986): 79–115, at 61, 68–71.

104 Richard C. Friedman and Jennifer I. Downey, *Sexual Orientation and Psychodynamic Psychotherapy: Science and Clinical Practice* (New York: Columbia University Press, 2002), 296.

105 Vernon A. Rosario, ed., *Homosexuality and Science: A Guide to the Debates* (Santa Barbara: ABC-CLIO, 2002), 129.

106 J. Louis Campbell, III, *Jack Nichols: Gay Pioneer: ‘Have You Heard My Message?’* (2007; repr., New York: Routledge, 2012), 84 (quoting Irving Bieber); cf. Simon LeVay, *Queer Science: The Use and Abuse of Research into Homosexuality* (Cambridge, MA: MIT Press, 1996) (extensively documenting and criticizing neo-Freudian efforts to therapeutically ameliorate or “reverse” homosexual tendencies).

107 Jack Drescher, “I’m Your Handyman’: A History of Reparative Therapies,” in *Sexual Conversion Therapy: Ethical, Clinical, and Research Perspectives*, ed. Ariel Shidlo, Michael Schroeder, and Jack Drescher (Binghamton: Haworth Press, 2001), 5–24, at 5, 11–12.

108 Otto Fenichel, *The Psychoanalytic Theory of Neurosis* (New York: W. W. Norton, 1945), 324.

109 Jeffrey P. Dennis, “What Is Homosexuality Doing in Deviance?,” in *The Handbook of Deviance*, ed. Erich Goode (Malden: Wiley-Blackwell, 2015), 172–88, at 174–77.

110 Fred Fejes, *Gay Rights and Moral Panic: The Origins of America’s Debate on Homosexuality* (New York: Palgrave Macmillan, 2008), 17. See generally, David K. Johnson, *The Lavender Scare: The Cold War Persecution of Gays in the Federal Government* (Chicago: University of Chicago Press, 2004).

111 Miriam G. Reumann, *American Sexual Character: Sex, Gender, and National Identity in the Kinsey Reports* (Berkeley: University of California Press, 2005), 194.

112 Edmund Bergler, *Homosexuality: Disease or Way of Life?* (New York: Hill and Wang, 1956).

113 Jennifer Terry, *An American Obsession: Science, Medicine, and Homosexuality in Modern Society* (Chicago: University of Chicago Press, 1999), 466n38 (documenting seven editions through 1971).

114 Lise Noël, *Intolerance* (Montreal: McGill-Queen’s University Press, 1994), 64.

115 J. William Spencer, *Contexts of Deviance: Statuses, Institutions, and Interactions* (New York: Oxford University Press, 2015), 266.

116 D. J. West, *Homosexuality: Its Nature and Causes* (1967; repr., New Brunswick: Aldine/Transaction, 2008), 228–37; Steven Angelides, *A History of Bisexuality* (Chicago: University of Chicago Press, 2001), 88–90.

were often aggressive and destructive of the patient they sought to treat. Drugs, castration, neurosurgery, fear-aversion techniques, and electroshock therapies were among the instruments therapists employed.¹¹⁷

By the late 1960s and early 1970s, however, the tide had begun to turn. Empirical studies revealed that prevailing views of same-sex attraction as inherently sociopathic could not be sustained.¹¹⁸ In 1972, the American Psychiatric Association commenced the process that led to homosexuality being dropped as a disorder within the following year.¹¹⁹

Ensuing decades witnessed a gradual acknowledgment that homosexuality was a naturally occurring divergent form of sexual orientation and expression that carried no diagnostic or pathological significance.¹²⁰ Indeed, the psychological literature now focuses on the ideal of acceptance and the means by which gay individuals achieve healthy self-esteem and personal integration.¹²¹ The suggestion that being gay is the result of infantile trauma or pathological fear that can be remedied through treatment has fallen into deep and deserved disrepute.¹²²

The Jurisprudence of the Canon Lawyers

Rotal Decisions, 1920s to 1960s

Early rotal decisions used harsh language when speaking of homosexuality. A 1929 decision echoed the manualists in ranking homosexuality as “worse than fornication and adultery.”¹²³ A court decision of 1935 declared homosexuality to be “a depraved inborn quality opposed to nature.”¹²⁴ In 1956, one finds similar language in a decision of Dino Cardinal Staffa, who was among the most respected if conservative canonists of the age.¹²⁵ He described homosexuality as the “sodomiticum vitium” (sodomitical vice) even as he explained that the young man in the case before the Rota was motivated to marry to prove to his father that he was not suffering from that “de pessimo vitio” (worst of all the vices).¹²⁶

117 Timothy F. Murphy, “Redirecting Sexual Orientation: Techniques and Justifications,” *Journal of Sex Research* 29, no. 4 (1992): 501–23; Charles Silverstein, “Psychological and Medical Treatments of Homosexuality,” in *Homosexuality: Research for Public Policy*, ed. John C. Gonsiorek and James D. Weinrich (London: Sage, 1991), 101–17, at 104–11; Clive Irving, “The Castration of Alan Turing, Britain’s Code-Breaking World War II Hero,” *Daily Beast*, November 29, 2014, <https://www.thedailybeast.com/the-castration-of-alan-turing-britains-code-breaking-wwii-hero>.

118 Henry L. Minton, *Departing from Deviance: A History of Homosexual Rights and Emancipatory Science in America* (Chicago: University of Chicago Press, 2010), 219–258.

119 Minton, *Departing from Deviance*, 258–62; Tom Waidzunus, *The Straight Line: How the Fringe Science of Ex-gay Therapy Reoriented Sexuality* (Minneapolis: University of Minnesota Press, 2015), 70–77.

120 For one example, see the American Academy of Pediatrics, “Promoting the Well-Being of Children Whose Parents Are Gay or Lesbian,” *Pediatrics* 131, no. 4 (2013): 827–30.

121 Allan Peterkin and Cathy Risdon, *Caring for Lesbian and Gay People: A Clinical Guide* (Toronto: University of Toronto Press, 2003), 156–84; Richard Isay, *Becoming Gay: The Journey to Self-Acceptance* (New York: Vintage Books, 1997), 3–9.

122 Wayne Besen, “The Rise and Fall of the ‘Ex-gay’ Myth,” *Gay and Lesbian Review* 19, no. 5 (2012): 5.

123 *Coram* Parrillo, August 12, 1929; *Decisiones seu Sententiae* [hereafter *RRDec*] 21: 433, 441.

124 *Coram* Massimi, August 12, 1935, *RRDec* 27: 357.

125 Staffa sided with the conservative minority during the early phases of the Second Vatican Council. John W. O’Malley, *What Happened at Vatican II* (Cambridge, MA: Harvard University Press, 2008), 110. He defended the use of liturgical Latin against all odds. Thomas F. O’Meara, “Reflections on Yves Congar and Theology in the United States,” *U.S. Catholic Historian* 17, no. 2 (1999): 91–105, at 92.

126 *Coram* Staffa, July 29, 1955, *RRDec* 47: 674, 676.

Still, even though the early rotal decisions retained the harshly moralizing language of the manualist writers, one also began to see these judges pose probing questions about the nature of homosexuality. Their judicial role required as much. After all, they were being asked to determine whether marriages between a homosexual and a heterosexual partner qualified as valid under canon law. Since a finding of invalidity often hinged on a party's mental state at the time of the wedding, the judges sought a complete and up-to-date understanding of the scientific literature. If a party willfully strayed from the marital commitment, in other words, an annulment was unlikely to be granted. If, on the other hand, the homosexual partner could be shown never to have had the capacity to make a marital commitment, then the heterosexual partner might receive an annulment and the consequent freedom to marry again in the church. Petitioners thus had an incentive to prove that homosexuality was an innate and inalterable characteristic of at least some persons, and it is no surprise therefore that we find in a 1943 decision the following language: "It is keenly debated whether [homosexuality] is acquired or, perhaps more likely, inborn, or whether it is a vice or a disease."¹²⁷

A significant number of decisions from the 1940s to the 1960s, following the psychological literature of the day, demonstrated a conviction that homosexuality constituted a mental disorder. In 1940, the Rota reviewed the case of a petitioner who had been married to her husband for only a few months when she discovered that he was homosexual.¹²⁸ She alleged that her marriage was invalid on the basis of his impotence to maintain a sexual relationship with her. In essence, her claim sought to fit an allegation of same-sex attraction within a very old and traditional category of marriage nullity—the perpetual impotence of the male partner.¹²⁹

The Rota, however, rejected this theory of the case. Still, it looked deeply into the psychological causes of homosexuality, as they were understood at the time, and so investigated such factors as the husband's childhood relationship with his parents.¹³⁰ It described homosexuality as a "disease or a pathological condition either congenital or acquired."¹³¹ In the final analysis, the Rota decided that homosexuality was presumptively a transient and not a permanent condition and since there was a possibility of a cure, the parties were required to remain together.¹³²

The case of *coram* Lamas, of March 15, 1956, was similarly brought by a wife shocked at her husband's homosexuality.¹³³ The wife discovered that her husband kept hordes of homosexual pornography. The husband drank heavily, abandoned the family home, and was charged with the unspeakable vice of sexual inversion ("nefandi vitii inversionis sexualis").¹³⁴

In seeking to explain the husband's conduct, the Rota performed a lengthy analysis of the state of knowledge on the subject of homosexuality. There were, the court noted, two prevailing theories

127 *Coram* Grazioli, March 16, 1943, *RRDec* 35: 204, 207 ("Acriter sane controvertitur, an habenda sit acquisita vel potius uti congenita, seu utrum vitium an sit morbus"). The *potius uti* construction is difficult to render in English. It signifies that the latter choice is probably to be preferred over the former. I have rendered it "perhaps more likely" above.

128 *Coram* Jullien, February 16, 1940, *RRDec* 32: 141.

129 *Coram* Jullien, *RRDec* 32: 145. The petitioner alleged that her husband suffered from congenital and incurable sexual inversion ("ad inversione sessuale congenita ed inguarabile"). *Coram* Jullien, 145.

130 *Coram* Jullien, 146–48.

131 *Coram* Jullien, 143 ("morbo vel conditioni pathologicae cognitae vel acquisitae").

132 *Coram* Jullien, 153–54. Cf. William J. Tobin, *Homosexuality and Marriage: A Canonical Evaluation of the Relationship of Homosexuality to the Validity of Marriage in the Light of Recent Rotal Jurisprudence* (Rome: Catholic Book Agency, 1964), 98–99 (further evaluating *coram* Jullien).

133 *Coram* Lamas, March 15, 1956, *RRDec* 48: 237.

134 *Coram* Lamas, *RRDec* 32: 237.

about its cause. The first held that its origins were biological—some men were born with an excess of feminine chromosomes and these men might be described as “congenital homosexuals, from birth” (“sunt homosexuales congeniti nati”).¹³⁵

The Rota, however, was convinced that most instances of homosexuality were caused by infantile trauma (“experientiis homosexualibus infantiae”).¹³⁶ Repeating the commonplaces of neo-Freudian psychology, as it had been distorted by the work of Rado and others, the Rota distinguished between two types of infantile trauma: fear of castration and inordinate fixation on the mother.¹³⁷ And as it had sixteen years before, the Rota concluded that this sort of homosexuality was treatable—even as it conceded that cures were difficult to come by.¹³⁸ Viewing homosexuality as amenable to psychiatric intervention, the Rota rejected the wife’s petition, holding that the husband, by his marital consent, truly intended to contract a valid Christian marriage, that he was capable of fulfilling its terms, and that the parties should therefore be required to remain together as husband and wife.¹³⁹

Coram Bonet, decided in 1959, arose when the wife grew disgusted at her husband’s preference for teenaged boys (*ephebos*, in the language of the Rota). She left the household and petitioned for nullity on the basis of her husband’s impotence.¹⁴⁰ In the course of rendering judgment, the Rota defined homosexuality as “a disordered psychological preference for persons of one’s own sex, constituting a sexual disorder that quite frequently diminishes and sometimes removes completely sexual desire for members of the opposite sex.”¹⁴¹ This case stands out for the completeness of the Rota’s reliance on psychological language in its definition of homosexuality.

Less often, the Rota considered allegations of lesbianism. *Coram Sabbatani*, December 20, 1963, was one such case.¹⁴² Again, the Rota relied heavily on the current psychological understandings of homosexuality to frame what it took to be the essence of lesbianism. Such homosexuality, the Rota reasoned, can invalidate a marriage when it is found to result in “an absolute and invincible physical or psychological rejection of the other sex so that the homosexual finds it impossible to tolerate intimacy with a person of a different sex.”¹⁴³ The Rota thought that proof of lesbianism was more difficult than proof of male homosexuality since the woman was presumed—an old presumption, dating to the medieval scholastics—to be the passive partner,¹⁴⁴ but in the circumstances of the case the Rota concluded both that the woman’s lesbianism was easily proven and that it fatally flawed the marriage’s validity.¹⁴⁵

135 *Coram Lamas*, 241.

136 *Coram Lamas*, 241.

137 *Coram Lamas*, 241.

138 *Coram Lamas*, 241–42 (“praedictam anomaliam emendabilem esse, licet sanatio difficultatibus non careat” [The aforementioned anomaly is correctable, even if a cure is not without difficulty]).

139 *Coram Lamas*, 246.

140 *Coram Bonet*, May 25, 1959, *RRDec* 51: 285.

141 *Coram Bonet*, *RRDec* 51: 286. “Homosexualitas seu psychica deviatio erga personas eiusdem sexus vitium constituit quod non raro minuit vel aliquando fere aufert proclivitatem sexualem in personas alterius sexus.” I render the noun *deviatio* as “disordered . . . preference.” *Vitium* is often, and correctly, rendered as “vice,” but in context I believe “sexual disorder” is the better translation of *sexus vitium*.

142 *Coram Sabbatani*, December 20, 1963, *RRDec* 55: 959.

143 *Coram Sabbatani*, *RRDec* 55: 960 (“Nam homosexualitas . . . ut indicat absolutam et invincibilem repulsionem physicam vel psychicam in alterum sexum, ita ut homosexualis haud possit intimitatem tolerare personae diversi sexus”). *Haud* is an intensifier; in context, it stresses the idea of impossibility.

144 *Coram Sabbatani*, 960–61.

145 *Coram Sabbatani*, 962 (“Uxor conventa nuptias contraxi in statu psychicae debilitationis ob distortam suam sexualitatem” [The wife-defendant contracted marriage in a state of psychological weakness caused by her distorted sexuality]).

To summarize: what stands out about these cases is not the liberalism of their results. Most of these cases continued to articulate old and powerful negative stereotypes. The judges looked to science, it seems, to justify ideas they already held about homosexuality. They wanted confirmation. Theirs was a results-oriented jurisprudence.

All that said, these cases are significant precisely for the way they shift the premises of the discussion about homosexuality away from the old acts-based morality of the manualists and in the direction of science. Implicitly, they pose the question of what happens when the science changes. What happens when the psychological and psychiatric communities conclude that homosexuality is not a pathological disorder but a naturally occurring phenomenon? What happens when those communities of experts conclude that gay relationships should be as accepted by society at large as heterosexual ones? As I discuss in the latter sections of this article, this is precisely the question the church struggles with today.

Mid-century Canonistic Scholarship

Before I discuss the church's contemporary struggles on same-sex relations, it is necessary to examine the evolution of the academic canon lawyers on homosexuality. By the end of the 1960s a consensus had emerged among rotal judges and learned canon lawyers alike that same-sex relations were pathological. As soon as the scientific consensus shifted, this consensus was thrown into confusion from which it has yet to recover.

The 1960s' canonists, however, were confident that the scientific evidence confirmed all of their old and hostile suspicions about same-sex attraction. The decade began with Vincent Coburn, a Newark, New Jersey, canon lawyer, proposing to synthesize this body of judicial learning with the latest scientific findings. Coburn argued that homosexuality could be traced to one of two causes: organic anomalies or "psychogenic" factors.¹⁴⁶ Coburn rejected categorizations of homosexuality as a disease. Rather, he preferred to describe homosexuals as those who "were invincibly drawn to acts against nature."¹⁴⁷ What did he mean? The word *invincibly* suggests the absence of choice and demanded a better explanation than Coburn subsequently provided. He largely sidestepped the issue even while admitting that homosexuality should be thought of as a "disturbance ... of the intellect or of the will."¹⁴⁸ On the other hand, in recommending that canon law remain attuned to developments in the field of psychiatry, Charles Ritty stated that the law "is a living science" and that it continuously refreshes itself from external currents of thought.¹⁴⁹

Two book-length dissertations published in the year 1964 also endorsed a continuing alliance between the Rota and psychiatry. John Keating's greatly influential treatise *The Bearing of Mental Impairment on the Validity of Marriage* contained a section "Constitutional Homosexuality."¹⁵⁰ Keating employed the older psychiatric category of "fear" to describe homosexual orientation. Homosexuals suffered variously from a *horror copulae* or a *horror feminae* that

146 Vincent P. Coburn, "Homosexuality and the Invalidation of Marriage," *Jurist* 20, no. 4 (1960): 441–59, at, 444–46. Although Coburn does not commit himself on the question, he indicated that many Catholic writers doubted the existence of organic causes for homosexuality. Coburn, "Homosexuality and the Invalidation of Marriage," 445–46.

147 Coburn, 454.

148 Coburn, 453.

149 Charles J. Ritty, "Possible Invalidity of Marriage by Reason of Sexual Anomalies," *Jurist* 23, no. 4 (1963): 394–442, at 394, 422.

150 John R. Keating, *The Bearing of Mental Impairment on the Validity of Marriage: An Analysis of Rotal Jurisprudence* (Rome: Gregorian University Press, 1964), 196–200.

prevented them from forming heterosexual unions.¹⁵¹ For that reason, Keating proposed that homosexuals were “objectively incapable” of marital commitment.¹⁵²

William Tobin, in his work *Homosexuality and Marriage*, rejected the idea that homosexuality should be analyzed principally as a voluntary chosen “vice,” for otherwise it would be a commonplace occurrence among “the sophisticated, satiated, and blasé.”¹⁵³ Like Keating, he preferred to look to psychiatric sources that “favor a psychogenetic etiology,”¹⁵⁴ though he believed that individual cases might be subject to therapeutic intervention.¹⁵⁵

In the early 1970s, Professor John Rogg Schmidt of the Catholic University of America published a series of articles on homosexuality and canon law which had as their shared premise a commitment to the psychological analyses that have been reviewed. Schmidt’s larger ambition was to reform canon law to make homosexuality a distinct impediment to marriage.¹⁵⁶

Thus by the early 1970s, it had become evident that the magisterium of the Catholic Church, when it came to evaluating the impact homosexuality had on the capacity of parties to contract marriage, strongly relied on the developing of psychological literature of the day. Still, there was a tendency in the cases and the commentaries, to select scientific opinions that supported underlying prejudices. Thus the Rota and the commentators tended to prefer the neo-Freudian view of homosexuality as the result of infantile trauma and so theoretically amenable to “treatment.” This position allowed them both to sustain most marriages as valid—the “afflicted” spouse should seek to be “cured”—while reinforcing all the old stigmas and stereotypes.

Still, the most interesting feature of this experiment in legal thought was the degree to which canon lawyers trusted in scientific findings. For sure, they were partial, selective, and biased. They craved scientific legitimation for their world view. They were consequently unprepared for the seismic shift that occurred in the scientific literature on same-sex attraction that commenced in earnest in the 1970s.

Rotal Decisions, 1980s–1990s

ANTON STANKIEWICZ

Anton Stankiewicz was among the most learned of the Rotal judges of the 1980s and a canonical scholar with a substantial record of publication.¹⁵⁷ In a November 1983 decision, Stankiewicz

151 Keating, *The Bearing of Mental Impairment on the Validity of Marriage*, 199.

152 Keating, 199.

153 Tobin, *Homosexuality and Marriage*, 42.

154 Tobin, 60.

155 Tobin, 68–74.

156 John Rogg Schmidt, “Homosexuality and Validity of Marriage: A Study in Homo-Psychosexual Inversion,” *Jurist* 32, no. 3 (1972): 381–99; John Rogg Schmidt, “Homosexuality and Validity of Marriage: A Study in Homo-Psychosexual Inversion: Elaboration of Principles; Consideration of Cases,” *Jurist* 32, no. 4 (1972): 494–530; John Rogg Schmidt, “Homosexuality and Validity of Marriage: A Study in Homo-Psychosexual Inversion: Etiology of Psychosexual Inversion,” *Catholic Lawyer* 21, no. 2 (1975): 85–121. To a considerable extent, Schmidt was elaborating on claims made more briefly by John R. Cavanaugh, “Homosexuality as an Impediment to Marriage,” *Bulletin of the Guild of Catholic Psychiatrists* 7, no. 2 (1960): 96–109; and by Gerard Oesterle, “De Relatione Homosexualitatis ad Matrimonium” [On the relationship of homosexuality to marriage], *Revista Española de derecho canónico* 10, no. 28 (1955): 7–60.

157 See the bibliography of Stankiewicz’s works at Stefan Killermann, *Die Rota Romana: Wesen und Wirken des päpstlichen Gerichtshofes im Wandel der Zeit* [The Roman Rota: Ways and means of papal judicial headship in changing times] (Frankfurt: Peter Lang, 2009), 613.

considered whether homosexuality should be classified as a mental disorder and concluded that it likely should not be. Quoting Italian psychiatric literature, he noted that homosexuals only rarely self-report “the characteristics of a disease” and prefer to see their condition as having “social [or] ethical implications.”¹⁵⁸ He cited the revised *Diagnostic and Statistical Manual* as further evidence of evolving thought on the nature of homosexuality.¹⁵⁹

Stankiewicz, however, was unprepared to accept the conclusion that homosexuality should be seen as benign. Rather, he turned to antiquated or discredited sources to claim that while homosexuality might not be a mental disorder, many individual homosexuals suffered from related psychological afflictions.¹⁶⁰ He viewed homosexuality, finally, as a more or less fixed orientation that causes gay persons to avoid heterosexual relations in favor of same-sex couplings.¹⁶¹ Limiting his analysis to the question before the Rota—the impact same-sex orientation would have on a marriage with a heterosexual partner—Stankiewicz believed it to be disastrous for the mutuality and conjugality that must accompany married life.¹⁶²

CORMAC BURKE

Cormac Burke is an Irish priest and a member of Opus Dei.¹⁶³ He is conservative and traditional in his faith. He well understood that the intellectual landscape had shifted substantially from the 1960s and he wished to return it to its old and familiar form. He used the vehicle of a rotal decision to state this case.¹⁶⁴

“Today,” he wrote, “it is often asserted and popularly believed that the traditional opinion that homosexuality is an anomalous condition has been proven false in the light of scientific progress.”¹⁶⁵ “Ecclesiastical jurisprudence,” he continued, “cannot remain indifferent to these momentous changes. Rather, it is necessary to ponder the theoretical and practical effects produced in the canonical understanding of homosexuality especially with respect to the offering of valid matrimonial consent.”¹⁶⁶

He traced the analysis given to homosexuality in successive revisions of the *Diagnostic and Statistical Manual*, noting that the idea of “dystonic” sexual identity—sexual identity that causes one emotional or psychological distress—remained a diagnosable disorder into the 1980s, but that even that had finally disappeared.¹⁶⁷ Burke found this development personally upsetting, particularly because tribunal judges relied on the *DSM* in judging “cases of possible contractual incapacity for marriage.”¹⁶⁸ The *DSM*, furthermore, while an American publication, had gained

158 *Coram* Stankiewicz, November 23, 1983, *RRDec* 75: 673, 675.

159 *Coram* Stankiewicz, *RRDec* 75: 676.

160 *Coram* Stankiewicz, 676 (citing to the work of Irving Bieber and Charles Socarides, both of whom were also firm believers in the possibility of “reversing” homosexuality through psychoanalysis).

161 Carmen Peña García, *Homosexualidad y matrimonio: Estudio sobre la jurisprudencia y la doctrina canónica* [Homosexuality and marriage: Study of the jurisprudence and canonical doctrine] (Madrid: Comillas, 2004), 190–92.

162 *Coram* Stankiewicz, *RRDec* 75: 679.

163 See Cormac Burke, “Curriculum Vitae,” <http://www.cormacburke.or.ke/cv/1> (last accessed October 16, 2019).

164 *Coram* Burke, July 9, 1998, *RRDec* 90: 512.

165 *Coram* Burke, *RRDec* 90: 515.

166 *Coram* Burke, 515.

167 *Coram* Burke, 515.

168 *Coram* Burke, 516.

worldwide use.¹⁶⁹ Burke thus found it necessary to attack the *DSM* itself as an ideological instrument lacking in scientific merit.

He declared that there had been “notable professional dissent” in the psychiatric community when homosexuality was dropped as a disorder.¹⁷⁰ He used a speech by Dr. Melvin Sabshin indicating that the *DSM* revisions were the product of “forces outside the field” and “activists” to condemn the entire project.¹⁷¹ He cited as well a speech by George Vaillant that viewed the *DSM* modifications as based on “guess, taste, prejudice, and hope.”¹⁷²

Burke’s barrage against the *DSM* continued for pages. He found particularly helpful a disclaimer that the *DSM* made regarding its use in forensic settings: “In most situations, *the clinical diagnosis of a DSM-IV mental disorder is not sufficient to establish the existence for legal purposes of a ‘mental disorder,’ ‘mental disability,’ ‘mental disease,’ or ‘mental defect’*” (emphasis added by Burke).¹⁷³ Four pages later, Burke quoted a paper published by Alan Stone, professor of law and psychiatry at Harvard University: “Psychiatry does not stand outside history or morality, but how do we decide which history and which morality to accept?”¹⁷⁴

Burke now had the conceptual tools he needed to step outside of the constraints posed by acceptance of the *Diagnostic and Statistical Manual*. The *DSM* was not meant to cover juridic problems like marriage annulments and the *DSM*, furthermore, was a cultural artifact, not a scientific document, and it embodied the political views of the ambient culture. Having laid down these premises, Burke turned to a speech delivered by Pope John Paul II to the Roman Rota in February 1987.¹⁷⁵

In that speech, John Paul II praised the many great accomplishments of modern psychiatry but was principally concerned with asserting that some aspects of the modern science of the mind could not be “reconciled with the essential elements of Christian anthropology.” in particular the transcendence of the human person and the person’s orientation to God’s love.¹⁷⁶ John Paul II, however, was not criticizing modern psychiatry for its stance on homosexuality but for something else—the perceived scientific diminishment of the capacity of the human person to make a lifelong marital commitment.

Burke, however, saw embedded in the speech a principle capable of expansion. Finding in John Paul II’s call to scrutinize modern scientific explanations of the human person, Burke felt

169 *Coram* Burke, 516.

170 *Coram* Burke, 517.

171 *Coram* Burke, 517. Cf. Melvin Sabshin, “Turning Points in Twentieth-Century Psychiatry,” *American Journal of Psychiatry* 147, no. 10 (1990): 1267–74; cf. Melvin Sabshin, *Changing American Psychiatry: A Personal Perspective* (Washington, DC: American Psychiatric Publishing, 2008), 181–83 (welcoming the changes to the *DSM*).

172 *Coram* Burke, *RRDec* 90: 518. See also George Vaillant, “The Disadvantages of DSM III Outweigh Its Advantages,” *American Journal of Psychiatry* 141, no. 4 (1984): 542–45.

173 *Coram* Burke, *RRDec* 90: 519 (quoting *DSM-IV*).

174 *Coram* Burke, 523 (quoting Alan Stone, “Conceptual Ambiguity and Morality in Modern Psychiatry,” *American Journal of Psychiatry* 137, no. 8 (1980): 887–91, at 887, 888).

175 *Coram* Burke, *RRDec* 90: 524–25.

176 John Paul II, “Discorso di Giovanni Paolo II ai Membri del Tribunale della Rota Romana” [Address by John Paul II to the members of the tribunal of the Roman Rota (February 5, 1987), §4, https://w2.vatican.va/content/john-paul-ii/it/speeches/1987/february/documents/hf_jp-ii_spe_19870205_roman-rota.html (in Italian) (“inconciliabile con gli elementi essenziali dell’antropologia cristiana, perché chiusa ai valori e significati che trascendono il dato immanente e che permettono all’uomo di orientarsi verso l’amore di Dio e del prossimo come sua ultima vocazione” [irreconcilable with the essential elements of Christian anthropology, and closed to the value and significance of that immanent and transcendent fact which directs man in his orientation to God and his final vocation]). (My translation.)

empowered to dismiss much contemporary scientific evidence as “simple ideological preference.”¹⁷⁷ This allowed him to turn to other sources for insight: the Catholic catechism, recent pronouncements of the Congregation for the Doctrine of the Faith, and long-standing Catholic tradition.¹⁷⁸

In 2015, writing in his private capacity as a retired rotal official, Burke expounded further on the topic of same-sex marriage. It “makes no sense” to him.¹⁷⁹ Marriage involves “complementarity,” and *complementarity* for Burke meant that marriage be between a man and a woman.¹⁸⁰ Complementarity further demanded that all sexual acts be open to the possibility of procreation. Both contraception and same-sex relations contradicted this, for Burke, natural ideal. “Homosexual acts,” Burke wrote, “can appease physical desire but they can never even remotely signify the self-giving of two persons. Nor can they effect their union; the two are simply not made ‘one flesh.’ Homosexual acts are an exercise in emptiness, satisfying individual passion but leaving the persons as separate as before; nothing in the act unites them.”¹⁸¹

How does Burke possibly know any of this? Did he ask anyone in a same-sex union? Separateness and emptiness are emotional qualities that are experienced differently by different people and can be measured and studied by psychologists and sociologists. Has Burke taken a survey? Does he know anyone who has?

Burke’s struggle to justify his opposition to same-sex relations points to a larger problem in the canonistic/moralistic synthesis. With the breakdown of the old scientific consensus, with the emergence of a psychiatric science increasingly open to and accepting of gay sexuality, the old justifications have fallen into intellectual disarray. In the following section, we shall examine that disarray and the efforts—preliminary and tentative to be sure—on the part of the Holy See and at least a few bishops—to demonstrate a greater receptiveness to gay, lesbian, and transgender persons.

THE HIERARCHY, THE FAITHFUL, AND SAME-SEX RELATIONS, 1980S TO PRESENT

Retrenchment, Reaction, and Incoherence

Background

The 1970s saw the adoption by the Catholic Church of teaching documents that recommended gay persons be shown pastoral concern and understanding. Thus a decree, known as “*Persona Humana*,” published by the Congregation for the Doctrine of the Faith in 1975 instructed that gay persons who could not change their condition “must certainly be treated with understanding. ...

177 *Coram* Burke, *RRDec* 90: 528.

178 *Coram* Burke, 528–29. Cf. Cormac Burke, “Does Homosexuality Nullify a Marriage? Canon Law and Recent Developments in Psychology and Psychiatry,” in *Same-Sex Attraction: A Parent’s Guide*, ed. John F. Harvey and Gerard V. Bradley (South Bend: St. Augustine’s Press, 2003), 33–49. Burke there even more directly announced his opposition to trends in modern science: “Even if the majority of psychiatrists—for whatever reasons—were to conclude that homosexuality is no longer to be considered a disorder, Christian anthropology cannot accept this conclusion.” Burke, “Does Homosexuality Nullify a Marriage?,” 39.

179 Cormac Burke, *The Theology of Marriage: Personalism, Doctrine, and Canon Law* (Washington, DC: Catholic University of America Press, 2015), 179.

180 Burke, *The Theology of Marriage*, 179.

181 Burke, 179–80.

Their culpability will be judged with prudence.”¹⁸² In 1976, the National Conference of Catholic Bishops wrote, “[s]ome persons find themselves through no fault of their own to have a homosexual orientation. Homosexuals, like everyone else, should not suffer from prejudice against their basic human rights. They have a right to respect, friendship, and justice. They should have an active role in the Christian community. . . . [T]he Christian community should provide them a special degree of pastoral understanding and care.”¹⁸³

Hedging, hesitation, qualification, these documents were certainly guilty on those counts. As a matter of formal doctrine, not much was altered. Still, these texts represented a cautious, timid step in the right direction. The 1978 election of Karol Wojtyła as Pope John Paul II would, however, usher in a long period of retrenchment and, frankly, incoherence.

The Congregation for the Doctrine of the Faith under Joseph Ratzinger and John Paul II

The Congregation for the Doctrine of the Faith was established in 1542 as a response to the challenge of the Protestant Reformation and as a means of ensuring that the faith was being maintained whole and entire in the far-flung corners of Christendom. Known historically by various names—the Inquisition, the Holy Office—it was renamed the Congregation for the Doctrine of the Faith in 1965. From 1981 to 2005, when he was elected pope, Joseph Ratzinger presided over this body as its prefect. Over the course of that quarter century, the Congregation for the Doctrine of the Faith issued three documents of relevance.

LETTER ON THE PASTORAL CARE OF HOMOSEXUAL PERSONS (1986)

The document opens by seeking to correct what it considered a mistaken reading of “*Persona Humana*” that saw the homosexual condition as “neutral, or even good.”¹⁸⁴ Scripture and tradition stood firmly opposed to such an interpretation.¹⁸⁵ Homosexuality was a “moral disorder” and the Congregation for the Doctrine of Faith denounced “pressure groups,” especially of Catholics, who sought to challenge this view.¹⁸⁶ The document minimized the possibility that persons might have a fixed homosexual orientation and recommended instead that they experience a “conversion from evil,” even if that required “a profound collaboration with God’s liberating grace.”¹⁸⁷ The document called on bishops to resist secular political pressure that favored tolerance or acceptance and to provide appropriate pastoral care to homosexuals.

Retrograde, regressive, and destructive. “Pastoral Care of Homosexual Persons,” produced by Joseph Ratzinger’s Congregation for the Doctrine of the Faith, largely rejected even the distinctions of the old rotal cases between voluntary homosexuality and fixed and innate orientations. Prayer

182 Congregation for the Doctrine of the Faith, “*Persona Humana: Declaration on Certain Questions Concerning Sexual Ethics*” (December 29, 1975), §8, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19751229_persona-humana_en.html.

183 United States Conference of Catholic Bishops, *To Live in Christ Jesus: A Pastoral Reflection on the Moral Life* (Washington, DC: United States Catholic Conference, 1976), §52.

184 Congregation for the Doctrine of the Faith, Letter to the Bishops of the Catholic Church on the Pastoral Care of Homosexual Persons (October 1, 1986), §3, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19861001_homosexual-persons_en.html.

185 Congregation for the Doctrine of the Faith, Letter on the Pastoral Care of Homosexual Persons, §5.

186 Congregation for the Doctrine of the Faith, Letter on the Pastoral Care of Homosexual Persons, §7 (“moral disorder”), §9 (“pressure groups”).

187 Congregation for the Doctrine of the Faith, Letter on the Pastoral Care of Homosexual Persons, §12.

and pastoral intervention might summon forth a “liberating grace.” The text broadly hinted at the revival of old and discredited forms of conversion therapy.

“SOME CONSIDERATIONS CONCERNING THE RESPONSE TO LEGISLATIVE PROPOSALS ON NON-DISCRIMINATION” (1992)

A much briefer document, this text responded to legislative efforts to extend civil-rights protections to gay and lesbian persons. “Sexual orientation”—the Congregation for the Doctrine of the Faith put the term in quotation marks—“does not constitute a quality comparable to race, ethnic background, etc., in respect to non-discrimination.”¹⁸⁸ While declaring that homosexuals should be defended in their human rights, the document simultaneously endorsed action by civil governments to restrict their exercise: “these rights are not absolute. They can be legitimately restricted for objectively disordered external conduct. This is sometimes not only licit but obligatory.”¹⁸⁹ The instruction warned against enacting legislation that might “protect homosexual acts, public or private.”¹⁹⁰

In other words, by its terms the Congregation for the Doctrine of the Faith stood against the decriminalization of sodomy. One wonders what this body would have thought of as an appropriate civil penalty. The promise to secure gay and lesbian persons in their human rights impresses the reader as entirely empty.

“CONSIDERATIONS REGARDING LEGAL RECOGNITION OF UNIONS BETWEEN HOMOSEXUAL PERSONS” (2003)

The last of this trilogy of texts, this document stated the case against same-sex marriage. “Homosexual unions,” the Congregation for the Doctrine of the Faith announced, “are . . . totally lacking in the conjugal dimension, which represents the human and ordered form of sexuality. Sexual relations are human when and insofar as they express and promote the mutual assistance of the sexes in marriage and are open to the transmission of new life.”¹⁹¹ The text commanded that “all Catholics are obliged to oppose the legal recognition of homosexual unions,” and that “Catholic politicians are obliged to do so in a particular way.”¹⁹²

Read in the light of the intervening years, this final document seems suffused with hysteria. Its author must have realized that the tide was turning.

The Theology of the Body

If Joseph Ratzinger at the Congregation for the Doctrine of the Faith directed the moral, legislative, and political campaign against same-sex relations, John Paul II provided its theoretical foundation

188 Congregation for the Doctrine of the Faith, “Some Considerations Concerning the Response to Legislative Proposals on the Non-Discrimination of Homosexual Persons” (July 24, 1992), §10, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19920724_homosexual-persons_en.html.

189 Congregation for the Doctrine of the Faith, “Some Considerations Concerning the Response to Legislative Proposals,” §12.

190 Congregation for the Doctrine of the Faith, “Some Considerations Concerning the Response to Legislative Proposals,” §15.

191 Congregation for the Doctrine of the Faith, “Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons” (June 6, 2003), §7, http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20030731_homosexual-unions_en.html.

192 Congregation for the Doctrine of the Faith, “Considerations Regarding Proposals to Give Legal Recognition to Unions between Homosexual Persons,” §10.

with what has come to be known as his theology of the body. This was an elaborate, biblically grounded defense of marriage the pope commenced from the earliest days of his pontificate.

In his biblical exegesis, John Paul II juxtaposed two images. At the beginning, he stressed, there was a great solitude. Man stood alone. Adam spoke with God, he named the animals, but yet he experienced nothing but aching loneliness.¹⁹³ God sensed man's solitude and acknowledged that "[i]t is not good that the man should be alone."¹⁹⁴ Hence, woman was created.

The pope recognized that there was a tension in the biblical text between Genesis 2, which taught man was created first, and then woman, and Genesis 1:27, which held that God created them simultaneously, "male and female he created them."¹⁹⁵ His preference, however, was for the timing of Genesis 2's account and the perceived male/female duality of Genesis 1:27. This reading, after all, confirmed the exegesis he sought to promote.¹⁹⁶

On this foundation, John Paul built a theology of the complementarity of male and female and the concept of marriage as a communion of persons, male and female. Male-female coitus was central to this theology. As Eduardo Echeverria, an interpreter of John Paul II put it, "[d]oesn't the denial of this literal biological, and thus personal unit, imply either a resurrection of ancient Gnosticism, in its common denial of the created order, or the reduction of that biological matrix to a difference between male and female that is merely biological and not really personal, a reduction that fails to grasp the specifically human meaning of the body?"¹⁹⁷

Echeverria's rhetorical question aside, it was John Paul II who was guilty of biological reductionism. While he purported to put the "personal" at the heart of his thought, John Paul II's theology left no room to account for same-sex attraction or the emotional and psychological needs of gay and lesbian persons who needed human companionship as much as their heterosexual counterparts. Many examples of deeply committed same sex unions come to mind.¹⁹⁸

Indeed, John Paul II's theology has been criticized precisely for its neglect of human experience. Among its most important critics is Luke Timothy Johnson. For Johnson, the starting point for analyzing the acceptability of same-sex relations within the church is human experience.¹⁹⁹

There were several aspects to his case. First, the church must remain continuously open to new possibilities, as it was early in its history when it decided to admit gentiles as members, even though they had not undergone circumcision.²⁰⁰ Second, experience must not become a form of "cheap grace."²⁰¹ And so Johnson stressed, "[i]f *porneia* among heterosexuals includes promiscuity,

193 John Paul II, *Man and Woman He Created Them: A Theology of the Body*, Michael Waldstein, ed. and trans. (Boston: Pauline Books, 2006), 148–49.

194 John Paul II, *Man and Woman He Created Them*, 156. See also Genesis 2:18.

195 John Paul II, 157. See also Genesis 1:27.

196 John Paul II, 157–58.

197 Eduardo J. Echeverria, "In the Beginning . . .": *A Theology of the Body* (Eugene: Wipf and Stock, 2011), 246.

198 One such example is John Obergefell, the named plaintiff in *Obergefell v. Hodges*, who remained committed to his partner, John Arthur, for twenty years, tended to his needs following a diagnosis of amyotrophic lateral sclerosis, and wanted the state to list Arthur as his spouse on Arthur's death certificate. *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015); cf. Timothy M. Phelps, "The Accidental Pioneer: Ohio Man's Suit Led to Supreme Court Case on Gay Marriage," *Los Angeles Times*, April 15, 2015. Another example is Edith Windsor, the named plaintiff in *Windsor v. United States*, 570 U.S. 744 (2013). She had been informally married to her partner for forty years and formally married—in a Canadian ceremony—for some time before her partner's death. Cf. Adam Gabbatt, "Edith Windsor and Thea Spyer: A Love Affair that Just Kept On and On and On," *Guardian*, June 26, 2013.

199 Luke Timothy Johnson, "Homosexuality and the Church," *Commonweal*, June 11, 2007.

200 Johnson, "Homosexuality and the Church."

201 Johnson.

violence, and exploitation, then the church must condemn similar forms of homosexual behavior.”²⁰² Finally, Johnson recommended that natural law must be rethought, to accommodate new understandings of “the body and sexuality.”²⁰³ Michael Perry has made similar arguments, stating the case that gay, lesbian, and heterosexual people are all equally capable of leading lives of the self-giving love that is the essence of the marriage relationship.²⁰⁴

The Catholic Catechism of 1992

In 1992, John Paul II promulgated a new edition of the catechism for the Catholic Church. It contained tensions, and might even be described as incoherent. Section 2357 described homosexual acts as “intrinsically disordered” and “as acts of grave depravity.”²⁰⁵ Such acts were “contrary to the natural law” and cannot “proceed from a genuine affective and sexual complementarity.”²⁰⁶ On the other hand, section 2358 counseled that men and women who experience same-sex attraction “must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided.”²⁰⁷

The inconsistencies are evident. What is meant by respect or compassion if the experience of gay persons are denied (how else can one read the denial of “genuine affective and sexual complementarity”)? Similarly, what is meant by “unjust discrimination,” given that the catechism was published at around the same time the Congregation for the Doctrine of the Faith was hinting at the need to retain the old anti-sodomy laws?

This was largely the state of play in February 2013. Following thirty-five years of steady retrenchment and reaction, the landscape looked bleak. The magisterium seemingly abandoned its cautious opening to science. In its place there was erected a theology of the body that was both biologically reductionist and assumed that which it sought to prove. In the place of the old acts-based moralism of the manualists there stood an internally consistent logic that simply did not correspond with the lived human experiences of those whom it sought to instruct.

And then doors began to open, cautiously, tentatively. In February 2013 Benedict XVI resigned the papal office, and the following month Jorge Bergoglio, an Argentinian cardinal, was elected to fill the vacancy and assumed the name Francis.

The Era of Pope Francis

“Who Am I to Judge?”

Within months of his election, Pope Francis began to set a different tone on the question of the Catholic Church and sexual orientation. In the summer of 2013, on board the papal aircraft while returning from a visit to Brazil, Pope Francis said, regarding gay persons, “Who am I to

202 Johnson.

203 Johnson.

204 Michael J. Perry, “The Morality of Homosexual Conduct: A Response to John Finnis,” in “Symposium on Sexual Orientation,” special issue, *Notre Dame Journal of Law, Ethics, and Public Policy* 9, no. 1 (1995), 41–74, at 41–51.

205 Catholic Church, “Chastity in Homosexuality,” in *Catechism of the Catholic Church*, 2nd ed. (Vatican City: Libreria Editrice Vaticana, 1992), § 2357.

206 “Chastity in Homosexuality,” § 2357.

207 “Chastity in Homosexuality,” § 2358.

judge?” “Who am I to judge if they’re seeking the Lord in good faith?”²⁰⁸ The question was narrowly focused on gay priests. The answer was expansive and open-ended. As he continued to answer his own question, Francis paraphrased the Catechism, but omitted section 2357, with its references to grave depravity and intrinsic disorder.²⁰⁹

Indeed, Pope Francis has consistently avoided reference to that portion of the catechism. In fact, it has become clear that the pope does not wish to think or express himself in those categories. One may thus consider the way in which he elaborated on his airplane press conference in an interview he granted to the Jesuit editor of *La Civiltà Cattolica*, Father Anthony Spadaro. “A person once asked me,” the pope informed his interlocutor, “if I approved of homosexuality. I replied with another question: ‘Tell me: when God looks at a gay person, does he endorse the existence of this person with love, or reject or condemn this person?’”²¹⁰

Later in the same interview, Father Spadaro asked the pope about Christian anthropology and the evolution of doctrine: “Human self-understanding changes with time,” the pope responded, “and so also human consciousness deepens.”²¹¹ Pope Francis also reminded Father Spadaro that the church once endorsed slavery and had no objections to the death penalty, but now rejects both practices. “So we grow in our understanding of the truth.”²¹²

Since the granting of this interview, Pope Francis has taken further steps to signal, at least, a willingness to rethink long-held positions on same-sex relations. During his visit to the United States in late September 2015, Pope Francis sent a message of inclusiveness when it was made public that he privately received at the papal embassy in Washington, DC, a former high school student of his and his gay partner.²¹³

And once again, in the summer of 2016, in the context of another airplane interview, this time on a flight back to Rome from Armenia, the pope took up the question of apologies to the gay community. “The Church,” he said, “must say it’s sorry for not having comported itself well many times, many times.”²¹⁴ And among these apologies, the pope insisted, Christian must express their sincere regrets to gay persons for the historically horrific ways they have been treated.²¹⁵

Finally, in May 2018, a gay man who was the victim of clerical sexual abuse in Chile had a chance to meet with Pope Francis and reported news regarding the pope’s openness gay persons. The pope was said to have told Juan Carlos Cruz, the Chilean, that “you are gay does not matter. God made you like this and loves you like this and I don’t care. The Pope loves you like this. You have to be happy with who you are.”²¹⁶ The pope neither confirmed nor denied the conversation,

208 John L. Allen, Jr., “Pope On Homosexuals: Who Am I to Judge?,” *National Catholic Reporter*, July 29, 2013.

209 Charles J. Reid, Jr., “The Pope Said ‘Gay’—What Happens Next?” (blog), *Huffington Post*, August 1, 2013 (updated October 1, 2013), https://www.huffpost.com/entry/the-pope-said-gay-what-ha_b_3683862.

210 Antonio Spadaro, “A Big Heart Open to God: An Interview with Pope Francis,” *America*, September 30, 2013; Ed Pilkington, “Pope Francis Sets out Vision for More Gay People and Women in ‘New Church,’” *Guardian*, September 19, 2013.

211 Spadaro, “A Big Heart Open to God.”

212 Spadaro.

213 Michelle Boorstein, Dan Zak, and Sarah Pulliam, “Pope Francis Met with a Friend Who is Gay, and His Partner, While in DC,” *Washington Post*, October 2, 2015.

214 Joshua J. McElwee, “Francis: Christians Must Apologize to Gay People for Marginalizing Them,” *National Catholic Reporter*, June 26, 2016.

215 McElwee, “Francis”; Delia Gallagher and Daniel Burke, “Pope Says Christians Should Apologize to Gay People,” *CNN*, June 27, 2016, <https://www.cnn.com/2016/06/26/world/pope-apologize-gays/index.html>.

216 Stephanie Kirchgaessner, “Pope Francis Tells Gay Man: God Made You Like This,” *Guardian*, May 20, 2018.

but Catholic thinkers were nevertheless quick to herald its significance.²¹⁷ James Martin thus noted that the pope's statement was "a big deal. I cannot remember the pope making a comment about gay people being born that way."²¹⁸

The Synod of Bishops (2014)

Synods of bishops are a fairly routine occurrence in the life of the Catholic Church, and during the pontificates at least of John Paul II and Benedict XVI, they took on the appearance of little more than ratifying conventions. A pre-scripted agenda would be prepared, the bishops and pope would play their assigned roles, and reports and documents would issue some months (or years) later, summarizing the proceedings.

The Synod of Bishops' Extraordinary General Assembly on the family in the fall of 2014, however, took on a decidedly different character when Pope Francis indicated that it would be opened to debate and all the differences in opinion that were thereby entailed.²¹⁹ The working document—an *instrumentum laborum*, to borrow the canonical term of art—signaled that the question of same-sex relations was actually open to debate.

Thus while the text rejected the possibility of same-sex marriage, it also stated that it was the experience of bishops' conferences, in nations that allow for same-sex marriage or civil unions that "many of the faithful express themselves in favour of a respectful and non-judgmental attitude towards these people and a ministry which seeks to accept them"²²⁰ The working text went to cite that "[m]any responses and observations [of bishops and other consultants] call for theological study in dialogue with the human sciences to develop a multi-faceted look at the phenomenon of homosexuality."²²¹

Absent from this text were the fulminations that characterized the Congregation for the Doctrine of the Faith under Ratzinger's rule. There was no call for wholesale Catholic political action against gay and lesbian rights. Absent as well was the rigorous—and rigorously exclusionary—logic of John Paul II. In its place was dialogue, openness, a spirit of compromise, with room even being made for the "human sciences," which in context could mean everything from anthropology to neurology.

The synod stretched over most of two weeks in October 2014 and featured exceptionally lively debate. The first week witnessed a series of proposals by bishops to expand the working document in the direction of greater inclusivity. To speak of "living in sin," to refer to homosexuality as "intrinsically disordered," to denounce a "contraceptive mentality" were all seen as outdated labels worthy of rejection.²²² Father Thomas Rosica, a communications consultant to the Vatican, even

217 Nicole Winfield, "LGBT Community Cheers Pope Francis' 'God Made You Like This' Remark," *America*, May 21, 2018; Inés San Martín, "Abuse Victim Says Pope Francis Told Him 'Being Gay Doesn't Matter,'" *Cruce*, May 21, 2018.

218 Tom Kington, "Pope's Reported Comment to a Gay Man May Indicate a New Level of Acceptance of Homosexuality," *Los Angeles Times*, May 20, 2018.

219 John Gehring, *The Francis Effect: A Radical Pope's Challenge to the American Catholic Church* (Lanham: Rowman and Littlefield, 2015), 136–38.

220 Synod of Bishops, "The Pastoral Challenges of the Family in the Context of Evangelization," June 24, 2014, para. 115, http://www.vatican.va/roman_curia/synod/documents/rc_synod_doc_20140626_instrumentum-laboris-familia_en.html.

221 Synod of Bishops, "The Pastoral Challenges of the Family in the Context of Evangelization," para. 117.

222 Joshua J. McElwee, "Among First Synod Discussions: Changing Harsh Language, Trying 'Graduality,'" *National Catholic Reporter*, October 7, 2014.

declared that “[t]here was a great desire that our language has to change in order to meet the very difficult situations.”²²³

A large number of suggestions were advanced along more substantive lines. Catholics were encouraged to be “accepting and valuing” of homosexual orientation though not at the expense of Catholic doctrine.²²⁴ Bishops spurred their fellow prelates to find the “constructive elements” in gay relationships and recognize that “homosexuals have gifts and qualities to offer Christians.”²²⁵ Gay and lesbian people look to the church, it was declared, and wish to find there “a welcoming home.”²²⁶

A draft containing these proposals succeeded in winning the support of the majority of the bishops and fell just short of the two-thirds required to make the language a part of the official report.²²⁷ A number of Catholic commentators were nonetheless very pleased with the results. Austen Ivereigh, Paul Vallely, and Michael Walsh all viewed the progress as gaining an almost irreversible momentum.²²⁸

The progressive secular writer Jonathan Capehart shared the enthusiasm of the moment: “by talking about the humanity of gay and lesbian Catholics and worrying about their place in the church, Pope Francis is openly recognizing them as children of God. After centuries of demonization, that’s a revolutionary act that can’t be undone.”²²⁹ It was left to Andrew Brown, the curmudgeonly British critic of religious belief, to issue a warning: conservatives comprise “a small minority” within the church but they were well organized, strategic in their thinking, and were preparing to mount a resistance that could even lead to schism.²³⁰

Statements and Actions by Leading Prelates

The Synod served as an invitation to leading ecclesiastical figures to drive the analysis forward. Vincent Cardinal Nichols of Westminster wished the final document had been stronger. “I didn’t think it went far enough,” Nichols stated to the press.²³¹ Other leading prelates staked out similarly strong positions. Josef de Kesel, elevated to the rank of cardinal in 2016, thus spoke of his respect for gay persons, including “their way of living their sexuality.”²³²

223 McElwee, “Among First Synod Discussions.”

224 Emma Green, “The Vatican’s New Stance toward Gays and Divorcees,” *Atlantic*, October 13, 2014.

225 Lizzy Davies, “Vatican: ‘Homosexuals Have Gifts and Qualities to Offer Christians,’” *Guardian*, October 13, 2014.

226 Philip Pulella, “Vatican Document Challenges Church to Change Attitude to Gays,” *Reuters*, October 13, 2014;

and Josephine McKenna, “Vatican Calls for Catholic Church to Welcome Gays,” *Telegraph*, October 13, 2014.

227 Philip Pulella, “Catholic Bishops Drop Moves to Accept Gays,” *Reuters*, October 18, 2014; Eric J. Lyman, “Pope Francis: ‘God Is Not Afraid of New Things,’” *USA Today*, October 20, 2014.

228 Austen Ivereigh, “Pope Francis’ Healing, Loving Revolution Is Unstoppable,” *Guardian* October 19, 2014; Paul Vallely, “The Catholic Church Is Changing—And the Gates of Reaction Shall Not Prevail against It,” *Independent*, October 24, 2014; Michael Walsh, “In the Battle of Papal Politics, Pope Francis Will Triumph,” *Al-Jazeera*, October 20, 2014.

229 Jonathan Capehart, “Pope Francis and Gays Will Win by Losing This Round on Synod Draft,” *Washington Post*, October 20, 2014.

230 Andrew Brown, “A Catholic Church Schism under Pope Francis Isn’t Out of the Question,” *Guardian*, October 30, 2014.

231 John Bingham and Andrea Vogt, “Vatican Call for Church to Welcome Gay People Did Not Go ‘Far Enough’—Cardinal Vincent Nichols,” *Telegraph*, October 19, 2014.

232 John L. Allen, Jr., “Pope Francis Extends His Moderate Makeover of Church Leadership,” *Crux*, November 6, 2015; and John L. Allen, Jr., “New Belgian Cardinal Poised to Be Key Ally in Europe,” *Crux*, October 11, 2016.

Bishop Johan Bonny of Antwerp has called upon the church to recognize “the kind of interpersonal relationship that is also present in many gay couples. . . . The Christian ethic is based on lasting relationships where exclusivity, loyalty, and care are central to each other.”²³³ In a pastoral document he circulated within his diocese, Bishop Bonny described the church as the “traveling companion” to persons in committed relationships, including gay couples: “such situations deserve more respect and a more nuanced evaluation than the language of certain Church documents.”²³⁴

Cardinal Reinhard Marx of Munich-Freising—the episcopal see where Joseph Ratzinger served as archbishop from 1977 to 1982—stated, “You cannot say that a long-term relationship between a man and a man, who are faithful, is nothing. That it has no worth.”²³⁵ Two years later, in early 2018, Cardinal Marx added that he would consider whether to bless same-sex unions on a case-by-case “individualized” basis.²³⁶

Some senior American ecclesiastics have endorsed a similar openness. Blase Cupich, the cardinal-archbishop of Chicago, has made it a point to welcome gay and lesbian persons to the church.²³⁷ This includes the reception of Holy Communion by gay couples.²³⁸ Joseph Cardinal Tobin of Newark took the historic step of welcoming a pilgrimage of gay and lesbian Catholics to his cathedral church.²³⁹ Bishop Robert McElroy has criticized some conservative Catholics for their “corrosive and repugnant” attitudes on questions of gay rights.²⁴⁰

To be sure, there are also bishops who are resisting these trends. The operative bishop of Springfield, Illinois, Thomas Paprocki, staged a public exorcism on the occasion of Illinois’ approval of same-sex marriage legislation.²⁴¹ The divisive and extreme bishop of Madison, Wisconsin, Robert Morlino,²⁴² has determined that he will not permit the burial in Catholic

233 John A. Dick, “Belgian Bishop Advocates Church Recognition of Gay Relationships,” *National Catholic Reporter*, December 30, 2014.

234 Johan Bonny, “Synod on the Family: Expectations of a Diocesan Bishop,” trans. Brian Doyle, September 1, 2014, 14, <https://www.associationofcatholicpriests.ie/wp-content/uploads/2014/09/SYNOD-ON-FAMILY-ENG.pdf>.

235 Sarah McDonald, “Cardinal Marx: Society Must Create Structures to Respect Gay Rights,” *National Catholic Reporter*, June 28, 2016.

236 Anian Christoph Wimmer, “Cardinal Marx Endorses Blessing Ceremonies for Same-Sex Couples,” *Cruce*, February 4, 2018; Michael J. O’Laughlin, “German Cardinal Urges Pastoral Care of Gay Couples,” *America*, February 7, 2018; cf. Francis Z. Rocca, “The Catholic Church’s Looming Fight over Same-Sex Blessings,” *Wall Street Journal*, May 22, 2018.

237 Joyce Duriga, “Chicago Archdiocesan Outreach to Gay Community Remembers Orlando Victims,” *Catholic News Service*, June 21, 2016; Michael J. O’Laughlin, “Chicago’s Cardinal Cupich: Saying Gay, Lesbian, and LGBT Is a Step toward Respect,” *America*, July 18, 2017.

238 Vikki Ortiz Healy and Manya Brachear Pashman, “Cupich’s Influence to Grow as Cardinal: Archbishop Carries out Pope’s Vision in Chicago and Now on Global Scale,” *Chicago Tribune*, November 18, 2016.

239 Alexander Santora, “N.J. Cardinal Offers Historic Welcome to LGBT Community,” *nj.com*, May 7, 2017; Francis De Bernardo, “Newark Cardinal Will Welcome Catholic LGBT Pilgrimage,” *New Ways Ministry*, May 9, 2017; Robert Shine, “Cardinal’s Welcome to LGBT Catholics ‘Felt Like a Miracle,’” *New Ways Ministry*, June 14, 2017.

240 “San Diego Bishop: Some Catholics Have ‘Corrosive and Repugnant’ Views on Homosexuality,” *California Catholic Daily*, February 8, 2018, <https://cal-catholic.com/san-diego-bishop-some-catholics-have-corrosive-and-repugnant-views-on-homosexuality/>; Robert Shine, “Bishop McElroy: Right Wing Attacks on LGBT Issues a ‘Wake-Up Call’ For Catholics,” *New Ways Ministry*, September 20, 2017.

241 Charles J. Reid, Jr., “Shadow over Springfield: The Failures of a Warrior Bishop” (blog), *Huffington Post*, December 18, 2013 (updated February 17, 2014), https://www.huffpost.com/entry/bishop-thomas-paprocki_b_4442069.

242 Anthony Ruff, “A Pastoral Disaster: Bishop Morlino and the Parish in Platteville, WI,” *PrayTell*, May 3, 2012; Kathleen Williams, “Bishop Morlino Wrong to Attack Pope,” *Madison.com*, September 9, 2018.

cemeteries of spouses in same-sex marriages.²⁴³ Andrew Brown was not wrong in 2014 to warn of rising reactionary elements in some corners of the church.

The *Sensus Fidelium*

It is at best a pious legal fiction, at worst a self-deceiving illusion, to believe that doctrine in the church is handed down from an all-knowing hierarchy to a submissive and obedient flock and that this transmission takes place without regard to larger events in society and world. Whether one speaks of the church's rejection of its former approval of slavery,²⁴⁴ or the acceptance, after centuries of denunciation, of the principle of religious liberty,²⁴⁵ or the many other fundamental shifts in the church's teaching, it does violence to history to suggest that these developments took place in a vacuum.

On the contrary, these changes in church teaching were the result of larger shifts in public consciousness brought about by fundamental changes external to ecclesiastical authority or even the church. And on the subject of same-sex relations, we have witnessed over the last decade a sea change in Catholic attitudes on a global scale. To catch a glimpse of the comprehensiveness of these shifts, one might consider political developments in three traditionally Catholic countries, Spain, Argentina, and Ireland.

In Spain, after years of confrontation, the gay rights movement began to press in the early 2000s for equal status and recognition at law.²⁴⁶ José Luis Rodríguez Zapatero, who had been an academic lawyer before entering politics as a Socialist, was ready to extend his support to this movement following his election as prime minister in 2004.²⁴⁷ A bill was introduced in parliament in April 2005,²⁴⁸ and that summer Spain became the world's third country to adopt full marriage equality.²⁴⁹ Ten years later, in 2015, Zapatero boasted: "88 percent of Spanish people consider homosexuality to be socially acceptable, compared with 60 percent of Americans."²⁵⁰

243 Heidi Schlumpf, "Madison Priests Get Directives on Funerals of LGBT People," *National Catholic Reporter*, October 23, 2017; "Madison, Wisconsin's Bishop's Ban on Funerals for Gay People 'Outrageous and Shameful,'" *Dignity USA*, October 22, 2017.

244 Diana Hayes, "Reflections on Slavery," in *Changes in Official Catholic Moral Teachings*, ed. Charles E. Curran (New York: Paulist, 2003), 65–75.

245 John T. Noonan, Jr., *The Lustre of Our Country: The American Experience of Religious Freedom* (Berkeley: University of California Press, 1998), 329–53.

246 Kerman Calvo Borobia, "Necesidades Políticas y Protesta Colectiva en la Regulación de los Matrimonios Homosexuales en España" [Political necessities and collective protest on the regulation of homosexual unions in Spain], *Anuario de la Facultad de la Universidad Autónoma de Madrid* (2006), 139–59; Kerman Calvo Borobia, "Movimientos sociales, y Reconocimiento de Derechos Civiles: La Legalización de Matrimonio Entre Personas de Mismo Sexo en España" [Social movements and the reception of civil laws: The legalization of marriages between persons of the same sex], *Revista de Estudios Políticos*, no. 147, (2010): 137–67.

247 José Luis Martí and Philip Pettit, *A Political Philosophy in Public Life: Civic Republicanism in Zapatero's Spain* (Princeton: Princeton University Press, 2010), 122–23.

248 Ciaran Giles, "Spain's Gay Marriage Bill Nears Passage: Predominantly Catholic Nation Could Be Third in Europe to Legalize Same-Sex Marriage," *Houston Chronicle*, April 22, 2005.

249 Elizabeth Nash, "Gay Couples Win Right to Marry in Spain Despite Opposition," *Independent*, July 1, 2005; Renwick McLean, "Mostly Catholic Spain Legalizes Gay Marriage: Law among the Most Liberal in the World," *South Florida Sun-Sentinel*, July 1, 2005.

250 José Luis Rodríguez Zapatero, "A Lesson in Tolerance from Spain," *Washington Post*, May 28, 2015.

Following the Spanish approval, the question of same-sex marriage was heavily debated across Latin America. In 2010, Argentina took up the issue,²⁵¹ under the influence of a developing body of international principles and law.²⁵² Although the legalization of gay marriage was famously opposed by the archbishop of Buenos Aires,²⁵³ the future Pope Francis, it nevertheless was enacted into law in the summer of 2010.²⁵⁴ Argentina thus became the first nation in Latin America to extend full marital rights to gay and lesbian couples.²⁵⁵

The campaign for marriage equality, however, would reach a crescendo in Ireland. By 2011, considerable pressure had formed to accord full marital rights for same-sex relationships.²⁵⁶ The Irish Constitution, however, had been judicially construed as permitting only heterosexual marriage.²⁵⁷ Enda Kenny, elected *taoiseach* (prime minister) in 2011, after a period of vague equivocation,²⁵⁸ announced plans in 2013 to put the question of amending the Constitution to a popular referendum.²⁵⁹

The hierarchy actively engaged the issue. The conservatives were led by Cardinal Sean Brady, who had resigned from his position as archbishop of Armagh and primate of Ireland under pressure for his role in the sex abuse scandals rocking the Irish Catholic Church.²⁶⁰ Brady simply proved unable to rally the forces of opposition.²⁶¹ At the grassroots, however, a powerful upwelling of Catholic support for same-sex unions was detected.²⁶² An influential priests' group chose to remain neutral, which in context was read as a tacit endorsement of the referendum.²⁶³

251 "Same-Sex Marriage Bill Debate in Upper House Generates Mixed Feelings among Society's Representatives," *Buenos Aires Herald*, June 29, 2010.

252 Christine A. Bonomo, "Case Studies in the Advancement of Sexual Orientation Rights and the Role of Developing International Legal Norms: Argentina and Brazil," *Chicago Journal of International Law* 14, no. 1 (2013): 259–89, at 272–78.

253 Juan Marco Vaggione, "Sexual Rights and Religion: Same-Sex Marriage and Lawmakers' Catholic Identity in Argentina," in "Gender Justice and Human Rights in the Americas," special issue, *University of Miami Law Review* 65, no. 3 (2011): 935–54, at 941–45; "Bergoglio Accuses Same-Sex Marriage Bill of 'Being Satan's Work to Destroy God's Plan,'" *Buenos Aires Herald*, July 8, 2010.

254 Michael Warren, "Argentina Legalizes Same-Sex Marriage. Politically Risky Move Is First by a Nation in Latin America," *Houston Chronicle*, July 16, 2010; Soledad Gallego-Díaz, "Same-Sex Marriage Comes to Argentina," *El País*, July 21, 2010.

255 Alexei Barrionuevo, "Argentina Approves Gay Marriage, in First for Region," *New York Times*, July 15, 2010.

256 Kathy Sheridan, "How Gay Marriage Went Mainstream," *Irish Times*, July 14, 2012; Cathal Dervan, "Top Church of Ireland Minister Reveals His Same-Sex Marriage," *IrishCentral*, September 5, 2011.

257 Aisling Parkes, "National Report—Ireland," *American University Journal of Gender, Social Policy, and Law* 19, no. 1 (2011): 221–23, at 222.

258 Anna Grzymala Busse, *Nations under God: How Churches Use Moral Authority to Influence Policy* (Princeton: Princeton University Press, 2015), 104.

259 Frances Mulroney, "Date Set for Ireland's Same-Sex Marriage Referendum," *IrishCentral*, February 21, 2015.

260 Max Rossi, "Pope Accepts Resignation of Head of Scandal-Plagued Irish Church," *Newsweek*, September 8, 2014; Henry McDonald, Riazat Butt, and Tom Kington, "Irish Cardinal Refuses to Quit over Paedophilia Cover-Up," *Guardian*, March 14, 2010.

261 John Manley, "Bishops Urge MLAs' to Reject Motion on Same-Sex Marriage," *Irish Times*, April 29, 2014; Gerry Moriarty, "Bishops Oppose SF Move on Gay Marriage: Catholic Church Hierarchy Sends Open Letter to Assembly Members before Vote," *Irish Times*, April 29, 2014.

262 Ronan McGreevy, "Church 'Moving towards Acceptance' of Gay People," *Irish Times*, February 13, 2014; and Caomhán Keane, "Gay Catholics Pray 2015 Will Be the Year of the Welcome," *Irish Times*, May 25, 2015.

263 Patsy McGarry, "Priests' Group Stays Neutral on Referendum," *Irish Times*, March 25, 2015. See also Patsy McGarry, "'Comfortable Being Gay': A Priest Speaks," *Irish Times*, January 11, 2014 (Irish priest calls for reform of the way church speaks about "marriage, contraception, homosexuality").

Diarmuid Martin, the archbishop of Dublin, was openly conciliatory. At the very beginning of the campaign, he cautioned church leaders against harsh and insensitive language, reminding them that Jesus's harshest words were reserved not for sinners but for religious hypocrites.²⁶⁴ In an editorial in the *Irish Times* shortly before the vote, Martin conceded that "gay and lesbian people can be good parents, just as heterosexual people can be bad parents."²⁶⁵ "Marriage" he added, "is about love, marriage is about commitment, and marriage is about family."²⁶⁶ He defended the idea of male-female complementarity, but he stressed that he had "no wish to stuff my religious views down other peoples' throats."²⁶⁷

When the referendum passed in a virtual landslide (1,201,607 in favor, 734,300 opposed),²⁶⁸ Martin gracefully described the result as "a reality check."²⁶⁹

Writing in the aftermath of the Irish vote, Omar Encarnación reflected on "the apparent paradox of Catholic nations leading the world on gay rights."²⁷⁰ The trend, he noted, was unmistakable: "Overwhelmingly Catholic nations"—Spain, Argentina, Ireland—had become global trendsetters on same-sex unions. Encarnación, however, wished to see local controversies—Spanish and Latin American anti-clericalism, Irish anger over the pedophilia crisis—as playing a decisive role, rather than anything internal to Catholic thought.²⁷¹

I suggest a rather different explanation. Perhaps there is something larger occurring within Catholicism that is prompting and channeling this phenomenon. The last two generations of Catholics, at least, have been raised and catechized to value human relationships and to appreciate the centrality of human dignity in the ways others are treated.²⁷² No contemporary controversy has made the question of dignity more central to its outcome than the same-sex marriage debate. Human dignity demands that one's deepest needs for intimacy be respected. And the logical corollary is that all persons, regardless of sexual orientation, must be given the same opportunity to achieve public recognition and endorsement for their most important relationships.

CONCLUSION: MERCY, SCRIPTURE, DOCTRINAL CHANGE

Catholic law and teaching is dynamic and evolutionary. This is the case even on the subject of same-sex relations, where we have seen substantial change at least in the rationales undergirding the prohibition. The manualists recommended a one-size-fits-all, static, acts-centered approach. The judges of the Roman Rota, on the other hand, made generous use of psychiatric evidence, at least so long as it remained supportive of the outcomes that they wished to achieve. And when science altered its view of same-sex relationships, we saw a retreat into a theology of the body that on its own terms was impermeable to external criticism. And, since 2013, we have seen a remarkable shift in the

264 Patsy McGarry, "Archbishop Warns Over Insensitive Language," *Irish Times*, February 25, 2015.

265 Diarmuid Martin, "I Encourage Everyone to Vote and Reflect Carefully," *Irish Times*, May 19, 2015.

266 Martin, "I Encourage Everyone to Vote and Reflect Carefully."

267 Martin, "I Encourage Everyone to Vote and Reflect Carefully."

268 Yvonne Murphy, "The Marriage Equality Referendum, 2015," *Irish Political Studies* 31, no. 2 (2016): 315–30, at 325.

269 Diarmuid Martin, "'Reality Check' for Catholic Church," *Irish Times*, May 25, 2015.

270 Omar Encarnación, "There's Something about Marriage: Why the Vote in Ireland Was Bad for Same-Sex Rights," *Foreign Affairs*, May 31, 2015.

271 Encarnación, "There's Something about Marriage."

272 See, for example, John Sullivan, *Catholic Education: Distinctive and Inclusive* (Dordrecht: Kluwer Academic, 2001), 82–86.

other direction, as priests, ecclesiastical officials, and most of all the Catholic laity have demonstrated support for same-sex unions.

That Catholic law and doctrine seem on the cusp of dramatic change is not an unusual occurrence in the life of the church. Indeed, the history of the church is an account of similar shifts from its earliest days, when the circle around James and Peter yielded to Paul's decision to admit gentiles to the new movement without requiring them first to undergo circumcision.²⁷³

Consider just some of the other tectonic shifts in church doctrine and practice. There is, for instance, the history of penance and reconciliation. In the earliest church it seems that the accepted mode of forgiveness of sins was through baptism and its regeneration.²⁷⁴ In the third and fourth centuries, however, Christian communities had to deal with an unanticipated problem: what to do about believers who had committed grave acts of wrongdoing after becoming Christian? Writers like Clement of Alexandria and Origen responded to this need by proposing a penitential process that could reconcile truly grave sinners to the church after a long period of trial and repentance.²⁷⁵

In the early middle ages, this method of forgiving sins was replaced by a different system, imported to Europe from Irish monasticism. Penance was now repeatable—one might seek out confession as many times as one wished—and access was not limited to the gravest of sins, but could encompass any form of wrongdoing.²⁷⁶ Two lessons stand out: First, in adopting this system, the church greatly expanded the reach of mercy to address people's emotional need for reassurance about salvation. And, second, the church made clear that doctrine was evolutionary and it moved in the direction of greater mercy.

If the church could alter its institutions to accommodate a felt need for mercy, the church radically revised its scriptural exegesis on a variety of questions, but perhaps none more so than on the topic of anti-Semitism. The New Testament contains numerous anti-Jewish passages. There is the exchange between Jesus and "the Jews" in John 8:31–45. Jesus is recorded as telling his listeners, "I know that you are descendants of Abraham yet you seek to kill me because my word finds no place in you."²⁷⁷ This colloquy concluded with Jesus saying to the Jews, "you are of your father the devil, and your will is to do your father's desires"²⁷⁸ Elsewhere, we see "the Jews" "persecute" Jesus because he worked miracles on the Sabbath.²⁷⁹ In Matthew's Passion, the Jewish crowds chanted to Pontius Pilate, "His blood be on us and on our children."²⁸⁰ The Book of Revelation spoke of "Jews" who form "a synagogue of Satan."²⁸¹

273 Galatians 2:1–10.

274 Acts 2:38; 2 Peter 1:9.

275 Cornelia B. Horn, "Penitence in Early Christianity in Its Historical and Theological Settings: Trajectories from Eastern and Western Sources," in *Repentance in Christian Theology*, Mark J. Boda and Gordon T. Smith (Collegeville: Liturgical Press, 2006), 153–88, at 164–69; Robert L. Browning and Roy A. Reed, *Forgiveness, Reconciliation, and Moral Courage: Motives and Designs For Ministry in a Troubled World* (Grand Rapids: William B. Eerdmans, 2004), 106.

276 Regis Duffy, *A Roman Catholic Theology of Pastoral Care* (Philadelphia: Fortress Press, 1983), 36–37; John C. Wei, *Gratian the Theologian* (Washington, DC: Catholic University of America Press, 2016), 75–76.

277 John 8:35.

278 John 8:44.

279 John 5:16.

280 Matthew 27:25.

281 Revelation 2:9.

These and other similar passages provided scriptural warrant for nearly two millennia of persecutions of Jews by Christians. Jews were forced to wear distinctive clothing²⁸² and required to live in restricted ghettos.²⁸³ Medieval popes and preachers condemned the Talmud.²⁸⁴

This sort of hostility persisted into the twentieth century. With the fall of the papal state, the final decades of the nineteenth century witnessed “the growth of a Catholic anti-Semitism that was much more aggressive than its medieval counterpart or even that of the Counter-Reformation.”²⁸⁵ This Catholic anti-Semitism persisted into the twentieth century and was common both to Europe (such as the French clergy’s involvement in the Dreyfus Affair),²⁸⁶ and in America (such as the vulgar ranting of the radio priest Charles Coughlin).²⁸⁷ Until the end of the 1950s, the Good Friday liturgy contained denunciations of the Jews and prayers for their conversion.²⁸⁸

Such anti-Semitism, of course, became unthinkable following the unspeakable horror of the Holocaust. The experience of the Shoah revealed just how deadly all forms of anti-Semitism could be. And post-World War II Catholicism responded by radically revising its teaching.²⁸⁹ John Paul even came to describe Jews as “elder brothers in the faith.”²⁹⁰

And if scriptural exegesis can shift so fundamentally, so has the church’s exposition of the natural law. One might consider usury. Jesus taught, “Lend freely, asking nothing in return.”²⁹¹ The passage was embedded in Jesus’s admonition to love one’s enemies,²⁹² but this did not stop medieval philosophers and lawyers from taking it literally. Thus a medieval pope like Urban III (1185–1187) could declare that “Lend freely, asking nothing in return” was manifestly the rule that should govern commercial credit transactions.²⁹³ Judge John Noonan summarized the mind of the legislator that stood behind decrees like this: “Absolutely, unequivocally, without exception, all return on a loan was condemned.”²⁹⁴ A seemingly impregnable natural-law case against usury was created.

Indeed, Dante made usury a greater crime than sodomy. In Cantos 14 through 16 of the *Inferno*, he encountered groups of sodomites, including his old teacher Brunetto Latini and other once

282 Kenneth R. Stow, “The Church and the Jews: St. Paul to Pius IX,” in *Pope, Church, and Jews in the Middle Ages: Confrontation and Response* (Burlington: Ashgate, 2007), 1–70, especially 1, 24–25.

283 Jeffrey Richards, *Sex, Dissidence, and Damnation: Minority Groups in the Middle Ages* (New York: Routledge, 1991), 107–09.

284 Robert Chazan, *From Anti-Judaism to Anti-Semitism: Ancient and Medieval Constructions of Jewish History* (Cambridge: Cambridge University Press, 2016), 136–39.

285 Anna Foa, “The Difficult Apprenticeship of Diversity,” in *The Catholic Church and the Jewish People: Recent Reflections from Rome*, ed. Philip A. Cunningham, Norbert J. Hoffman, and Joseph Sievers. (New York: Fordham University Press, 2007), 41–53, at 51–52.

286 Ruth Harris, “The Assumptionists and the Dreyfus Affair,” *Past and Present* 194, no. 1 (2007): 175–211.

287 Mary Christine Athans, “A New Perspective on Father Charles E. Coughlin,” *Church History* 56, no. 2 (1987): 224–35.

288 Martin Dudley, “The Jews in the Good Friday Liturgy,” *Anglican Theological Review* 76, no. 1 (1994): 61–70; James Martin, “The Jews, the Latin Mass, and Good Friday,” *America*, February 7, 2008.

289 Eugene Korn, “On Modern Miracles,” in *A Jubilee for All: The Copernican Revolution in Jewish-Christian Relations*, ed. Gilbert S. Rosenfeld (Eugene: Pickwick Publications, 2014), 288–94, at 289–90.

290 “Pope Praises Jews as ‘Our Elder Brothers in the Faith,’” *Los Angeles Times*, August 20, 1987.

291 Luke 6:35.

292 Alan Kirk, “‘Love Your Enemies’: The Golden Rule and Ancient Reciprocity (Luke 6:27–35),” *Journal of Biblical Literature* 122, no. 4 (2003): 667–86.

293 *Decretales Gregorii IX* [The decretals of Gregory IX], X 5.19.10.

294 John T. Noonan, Jr., “Authority, Usury, and Contraception,” *CrossCurrents* 16, no. 1 (1966): 55–79, at 57.

upstanding citizens of Florence consigned to hell for their sexual misdeeds.²⁹⁵ The usurers he met in Canto 17 had a much less pleasant existence.²⁹⁶ In terms of the severity of penalties, for Dante, at least, usury was worse than sodomy.

And yet the church's teaching on usury dramatically changed in the early modern and modern periods, as the hierarchy came to reflect on the business needs and credit practices of Christian merchants and bankers. And if usury, a greater sin than sodomy in Dante's eyes, can be revisited and revised, one must ask whether the same revision will someday occur where same-sex relations are concerned.

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295 See, for example, Dante, *Inferno*, Canto 14, lines 21–42; Canto 15, lines 22–96; and Canto 16: 22–48; cf. John Boswell, “Dante and the Sodomites,” *Dante Studies* 112 (1994): 63–76 (on the sexual nature of these transgressors' sins).

296 Dante, *Inferno*, Canto 17, lines 34–78.